

1897-039 Chancery Cause: N. L. Johnson vs. John L. Pennington
Lee Co.

Baumgardner, Lawson, Watts, Duncan, Baumgardner

CA-Debt
T-Property

To the Hon. W. T. Miller Judge of
the Circuit Court of Lee County
Virginia.

Your oratrix A. L.
Johnson who humbly com-
plaining would respectfully
represent that, heretofore at
the Nov. Term of this Hon. Court
one John L. Pennington obtained
judgement against her for the
sum of \$642⁴³ ^{subject to a cred of \$101.60 of August 1894} and legal interest
thereon from the 1st day of August
1894 till paid. And the sum of
\$183²², for costs of suit upon
this a fi fa issued and was placed
in the hands of W. P. Weston
sheriff of this County for Collection.
And on the 18th day of Janry 1896
your oratrix entered into a Forth
Coming Bond with A. Johnson &
J. A. Tubbs

as her securities thereon, which
said ~~Bond~~ ^{Bond} on that day amounted
to the sum of \$1597¹⁴, the penalty
of said Bond but to be discharged
by the payment of the sum of
\$798²², no part of this last
named sum has been paid, and
a motion for execution is now
pending in this Hon. Court
against your oratrix and her
said securities on said bond.

The suit out of ~~said~~ ~~Permington~~
out of which said judgement
grew involved a long and intricate
account between your oratrix and
said Permington, in reference to
a lumber transaction, and owing
to its complex & involved nature
your oratrix was advised not to
plead certain assets she then
held against said Permington as
she could more easily settle them
by an independent suit thereon.
These assets are fully shown their
dates & amount by an account
thereof herewith filed marked
A. C. T. and they amount to the
sum of \$, are just and
unpaid. This account she has
offered to credit upon said bond
and judgement but she is advised
she can at law make such de-
fence ~~at law~~.

Ordinarily she is advised she
would have to institute a new
suit for the recovery thereof, but
such a course in this case would
be wholly unavailing. The said
J. L. Permington, while an active
trading man handling more or
less property, keeps it under dif-
ferent names, and beyond the reach
of the law, diverts execution there

been returned against him nulla
bona. and your oratrix is informed
believes and charges that the said J.
L. Pennington is now wholly in-
solvent, and that a judgment at
law on her claim when, had
would be wholly unavailing.
Your oratrix alleges that unless she
gets this account a small portion of
which has ^{been charged} ~~been charged~~ since the rendition
of said judgment, ^{but was owing before} offset against
or credited upon said judgment
against her, she will leave it
entirely, as she could not get out
of said Pennington's debt.

She is willing to confess judgment
and release errors at law upon
the granting of the injunction here-
inafter prayed for.

The object of this Bill is therefore
to enjoin the said J. L. Pennington
from collecting said judgment
until full proof of your oratrix's
claim be made, and then that the
same be offset against or credited
upon said judgment on said
bond. That a full & complete set-
tlement of all accounts and judg-
ments between the parties be made
and a balance struck which if
found against your oratrix will
be readily paid.

The premises Considered, your orator's
prayer is that J. L. Pimmington be
made a party, hereto and answer
the same but not upon oath
that being waived - and on a
hearing said acct of offset, be
settled & adjusted and the amount
thereof credited on said judgment
and that she have judgment over
against said Pimmington for the
amount found due her. And
for all other further and general
Relief May Supervisors see.
Duncan & Hyatt
Proclamator & Clerk.

Virginia Lee County to wit -

This day A. Johnson personally
appeared before me the undersigned
and made oath, that he acted as
agent for his wife M. L. Johnson
in the transactions referred to in the
forgoing bill, and that the allegations
thereof so far as made upon a
statement of its facts are true and
so far as made upon information
derived from others, he believes
them to be true Given under my
hand this March 9th 1896.

A B Munsey Clerk

12th N. 75.

St. L. Johnson

v Bill Chy

J. L. Pennington

1896 March term Contd
" June term Contd
" Nov term Contd
1897 March term Contd
" June Contd
" Oct term Decree
final Dec Chy ord
Book 6 P 24.

Pliffs Costs
Clerk 6.30
Shff 50
Cour in chg 1.50
J P 4.50
rets 50;
\$13.30

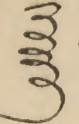
Defls Costs
Clerk 2.00
Cor ch 3.00
J P 3.00
Shff 1.20
rets 1.00
atly 15.00
25.20

To the Honorable W.T. Miller judge of the Circuit Court of Lee County:

The amended bill of N.L. Johnson to a bill heretofore exhibited by her in this honorable Court, against J.L. Pennington, which amendment is made by direction of this court, so as to make A.J. Baungardner a party defendant thereto. The object of said original bill, to which this is an amendment, was to enjoin the said J.L. Pennington from collecting a judgement rendered in his favor, on a forthcoming bond, against ~~EEEE~~ your Oratrix and one J.A. Tubbs, for the sum of \$798.57 and to have placed on said judgement a sum due from the said J.L. Pennington to your orator by way of account. Before a full hearing of said cause of your ~~EEEE~~ Oratrix against the said Pennington it was made to appear to your honor that one A.J. Baungardner was claiming by assignment or otherwise some interest in said judgement, whereupon your Oratrix was required to amend her bill making the said Baungardner a party to this suit. Now your oratrix hereby reiterating all her charges in said original bill, and here adopting the same as a part of this bill, prays that the said A.J. Baungardner be made a party defendant to this bill, that he be required to answer the same but he need not do so under oath as that is waived, that he answer when and how he obtained his claim, that he further answer and state all knowledge had or possessed by him of the said Penningtons indebtedness to your oratrix at the time he acquired his rights to or claim under said judgement, and upon a final hearing your Oratrix prays that the said Baungardner be further enjoined from asserting said claim to a part of said judgement, and that the injunction heretofore granted in this cause be made perpetual and for full general relief.

Prudence & small
Laneau & Hyatt

A. L. Johnson.

v.s.  Amundson
Pier

J. H. Pennington et al

To the Hon. W. A. Miller, Judge
of the Circuit Court for Lin
County:

Your petitioner E. H. Pen-
nington would respectfully
represent unto your honor
that there is now pending
in your honors Court, ^{a suit on the Chancery} of
N. L. Johnson vs. J. L. Penning-
ton wherein the said J. L.
Pennington is enjoined from
issuing an execution on
a judgment of \$ to
be discharged by the pay-
ment of \$ and \$
costs; that before the in-
stitution of said cause, \$400.00
~~for~~ of said debt was
on Nov. 7th 1895 assigned
to your petitioner of which
assignment the said Court
had notice, and that he
now has an interest in
the subject matter involved
in said suit. Therefore your
petitioner prays that he be
made a party to this suit

side thereof

suit and allowed to set
up his interest therein.
And he will ever pay &

Wm. Pennington
by Pennington Bros.

J. G.

N. L. Johnson
vs { Petition of
E. H. Pennington

J. L. Pennington

John L. Pennington

Deft.

ads.

In Chancery.

N. L. Johnson

Complt.

In the Circuit Court for Lee County, Virginia:-

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee County:-

The demurrer and answer of John L. Pennington to a bill of complaint filed against him in this honorable Court by N. L. Johnson; and for demurrer thereto, he says that the said bill of said complainant is not sufficient in law, and of this he prays judgement.

But if mistaken in the cause of ^{his} demurrer, and other and farther answer should be necessary, answering he says: That it is true that at the November term, 1895, of your honor's court for Lee County, on the law side thereof, he obtained a judgement in your said court on an action in assumpsit in reference to a lumber transaction between them for the sum of \$642.43 with legal interest thereon from the 1st day of August, 1894, till paid, subject to a credit of \$101.60 as of August 1st., 1894, and the costs of that suit, which according to the taxing of the clerk of said court amounted to \$183.77; that upon this judgement a fi. fa. was duly issued from the clerk's office of said Court and the same placed in the hands of W. P. Weston, sheriff of this County, who levied the same on a quantity of lumber belonging to the complainant in said bill; that she on January, 18th., 1896, made, executed and delivered a forthcoming bond, with A. Johnson and J. A. Tubbs as her sureties, wherein they each bound themselves to deliver the lumber so levied upon at the time and place of sale; that on the day of execution of said bond it amounted to the sum of \$1597.14, but to be discharged by the payment of \$798.57; that it is true that no part of said \$798.57 has been paid to your respondent; that at the time said complainant presented her said bill to your honor for an injunction there was pending in your honor's court in said county, a motion for an execution on said bond against said complainant and her said sureties therein on account of the failure to pay said judgement, or to deliver the lumber that had been levied upon, at the time and place of sale to satisfy said execution; and that it is true that an execution was awarded your respondent on said motion on said forthcoming bond on the ^{7th} day of March, 1896 against the said complainant and her said sureties for the sum of \$1597.14 to be discharged by the payment of \$798.57 with interest thereon from the 18th. day of January, 1896, till paid and the costs of said motion which amounts to \$7.13 according to the taxing of the said clerk. (see exhibit "A" herewith filed and

prayed to taken as a part of this answer);that it is true that said original judgement was obtained in an action with reference to a lumber transaction that was complex and involved in its nature,so mutch so,that by consent of parties therein,the whole matter was submitted to A.M.Goins^{for} settlement,statements and reports.(see copy of order of submission herewith filed as a part of this answer, and marked "B")and that it is true that your respondent does a good deal of trading and does handle more or less property,but he most emphaticlly denies that he keeps²² or any part of ~~it~~ under different names and beyond the reach of the law;what he has got,he claims himself,and holds in his own right. Your respondent supposes that it true that there has been within the last few years three or four ~~years~~ executions against him,that has been returned "no property found",but this does not make him insolvent.Your respondent denies that he is insolvent,or that if the said complainant had a judgement at law against him for the sum of money which she asserts he owes her, would be unavailing,or that she would loose one cent of the same.Your respondent does not at this time own very much personal property,but he asserts that he is the owner in fee of something like 2200 acres of mountain lands,most of which is fully paid for;this ²²lad is worth at least five dollars per acre;he does not owe all told more than \$5000.00.

It will be observed from an inspection of said complainant's bill,that she alleges that during the pendency of said action at law on which said original judgement was obtained,that she then held the off-sets against your respondent,which she in her bill alleges are yet due her,but that she was advised not to plead them therein,as she could more easily set them up in an independant action.Your respondent submits that by the terms of said order wherein the matters in said action were submitted to A.M.Goins,she could have brought the off-sets in and if just had them allowed.In fact she did before said Goins file a long account of the same character as this that she now wants off-set against said judgement,which is here filed for the inspection of the Court,marked "C".Now your respondent submits that she will not be allowed to split up her demands. The said complainant in her said bill allege that she files an account of her off-sets,showing amounts and dates; marked "Acct.";but your respondent denies that she has so filed such an account. Yet,he supposes that it is the same matters and things,which she offered to offset against his motion for an axedution on said forth coming bond. If so,your respondent here files a copy of that account with

his answer, marked "D", and says that it is correct except as to \$2.20 charged April, 22, 1895 and Mule \$35.00 and int. on same \$2.10 charged Sept. 28, 1895; he is of the opinion that this mule was paid for long ago, he therefore calls on her for strict proof that it has not been paid for. Your respondent denies that all of this account was due her at the time of the taking of the account by Commissioner Goins, the two last charges, to-wit \$176.10 as of Dec., 18th., 1895, Watts order, and due bill to J.P. Ely \$3.00 were not then due her from your respondent; they may have been ^{due} her from Watts and Ely for all she knows. ~~she~~ knows nothing about that except as to what he has heard. But your respondent asserts and alleges that on this account that there ^{might} be a farther credit paid some time in January, 1896 through Jos. Lawson and E.M. Spears of \$100.00, which she does not give credit for. Your respondent will show unto your honor how this account happened to be made with the said complainant: On January, 25th., 1895, your respondent entered into a contract with A. Johnson, the husband of said complainant wherein he agreed to sell the said A. Johnson a quantity of lumber to be manufactured from timber coming from the lands of E.S. Wax, Carter Eldridge, William Eldridge and the Jesse heirs, Elijah Pruitt and the Bartley land in the Pocket Country about 7 miles north from Pennington Gap, Va., which they supposed at the time would amount to about 200,000 feet, at the price of \$6.00 per M feet for shipping culls, \$18.95 for ones and twos and \$11.75 per M feet for commons to be delivered by your respondent at Pennington Gap; the said lumber to be sawed and stuck by the said A. Johnson for \$3.00 per M feet measured at the little end of the log, Doyle's rule; and that the said Johnson was to advance on the price of the same \$5.00 per M feet when each yard was on stick; and that the said Johnson was to have a lien on said lumber for his saw bill and all other advances on the same; and the balance to be due when the lumber was delivered in Pennington Gap, Va. and inspected, (a copy of said contract is here filed and marked "F", and prayed to ^{be} taken as a part of this answer); and that the said account except the saw bills therein charged, and said two charges which your respondent has herein before called for proof was advanced him by the said A. Johnson at the store of his wife, N.L. Johnson. ^{The complete series} The lumber in said contract has all been sawed and delivered to said Johnson, except about 25,000 or 30,000 ^{ft.} which is yet in the Pocket on the lands where sawed, and this your respondent is now ready to deliver to said Johnson, and what ever it comes to at the

prices aforesaid to be credited on said account. Your respondent would have had this lumber delivered long ago, but for the fact the said Johnson rather *as he is informed charges at the instance of said Campbell, or her husband* refused to take the same, and after it was sawed, one Joseph Watts put a saw-mill ⁱⁿ below it, and on the route it would have to moved out and thus stopped up the way. This saw-mill has been moved away ^{not} ~~but~~ ^{yet} ~~a few days~~ ^{but} and so soon as the waters get down and the roads settle ^{and said saw-mill moved} so as to get said lumber out, your respondent will proceed to deliver the same to said place for the said Johnson. Your respondent thinks that this lumber ought to bring at the prices aforesaid at least \$150.00 to \$200.00, at cull prices.

Your respondent will farther show unto your honor, that on Nov., 7th., 1895, by a writing he assigned this judgement to one E.W. Pennington to pay him on some matters that ^{he} owed him individually and as attorney for others; but in a few days after this assignment was made, by an arrangement between your respondent and the said E.W. Pennington, the said E.W. Pennington agreed to take only \$400.00 of this judgement for his purposes, and to let one A.J. Bumgardner have the residue, outside of the costs aforesaid to pay him on a debt of about \$250.00 that your respondent owed to him; and your respondent alleges that the said complainant before the payment, or acceptance of said two last orders charged in her said account, had notice of this assignment. So outside of his costs as aforesaid, your respondent has no interest in said judgement, except to see it paid to those entitled thereto. Now having answered said bill of said complainant fully and completely, she prays that said injunction be dissolved and that he be dismissed herein with his reasonable costs in this behalf expended. And he will ever pray etc.

E. W. Pennington
P.O.
Virginia.

Lee County to wit:

I, *Alfred Gray* *Notary Public*

in and for the County and State aforesaid, do hereby certify that John L. Pennington, whose name is signed to foregoing answer, personally appeared before me in my County aforesaid and made oath that the statements and allegations therein contained, in so far as made upon the information of others, he believes to be true, and in so far as made upon his own information and knowledge he knows are true. Given under my hand this the 7th day of April, 1896.

Alfred Gray

John L. Punnington

ads. } Answer

N. L. Johnson

Filed April the 9th 1896
W B Munsey Clerk

To the Hon. W. T. Miller, Judge of the Circuit Court for Lee County:

The answer of A. J. Bumgardner, to ^{amended} ~~an~~ bill in chancery filed in
the court by N. L. Johnson against your ~~xxxxxxx~~ respondent and others

For answer thereto, your said respondent says that J. L. Pennington was indebted to your respondent in the sum of about \$500.00, and that as part payment of the said indebtedness he assigned to your respondent a certain portion of a debt which he had against N. L. Johnston and the exact amount of which was then undetermined, it being pending in the court for a settlement between them. The assignment was made in the last days of December, 1895. To make it clear, the assignment came about in this way: your respondent called upon the said J. L. Pennington for an assignment of part of this debt to him, and in response thereto the said J. L. Pennington said that he had assigned the whole debt to E. W. Pennington, your said respondent and said J. L. Pennington went to see Mr. E. W. Pennington, the said J. L. Pennington, saying that he would try to get E. W. Pennington to let your respondent have an assignment of part, but [^] when your respondent and the said Pennington called to see the said ^{E. W.} Pennington upon this matter, they found [^] that he was away in the city of Atlanta at the Exposition, your respondent ascertained about what day he would return and agreed to meet on that day for the same purpose again and did do so, and it was there agreed by the said Pennington, E. W., ~~xxxxxx~~ that he would release all of the said debt except \$400.00, ~~which he did~~, and then the said J. L. Pennington assigned ~~him~~ your respondent the remainder of the debt, whatever it might be when the case was determined; within a week after this time your respondent saw the agent of the said N. L. Johnson, A. Johnson, who was a general agent and attending to all her matters, and advised ^{you him notice} ~~him~~ that he had an assignment from Pennington of the remainder of the debt after E. W. Pennington was to get \$400.00. In view of the premises, and by reason of the said

assignment, which was only by word of mouth from Pennington, and the notice aforesaid given by ~~thaxxxxix~~ your said respondent to the said A. Johnson, general agent for N.L. Johnston, your respondent has a right to have the injunction dissolved in this cause, and a judgment in his favor of all the Judgment granted in the law cause of J.L. Pennington vs. N.L. Johnston less the \$400.00, heretofore decreed E.W. Pennington; and for this relief makes prayer to your honor, and for all other relief in keeping with equity. And he will ever pray &c.

A. J. Bumpardner
By A. M. Gaines & R. H. Pennington Counsel

A. J. Burgerdrick al

ads. 3 August

A. R. Johnson. in
~~~~~  
~~~~~


A. L. Johnson

Plaintiff

vs

In Chancery.

J. L. Pennington

Def't.

This cause came on this day to be heard upon the original bill and account filed therewith, the ^{demurrer and} answer of J. L. Pennington to said bill and affidavits filed therewith, ~~the~~ ^{the} consideration in said demurrer and general replication to said answer, the petition of E. W. Pennington, depositions of witnesses, the amended bill of the plaintiff, the answer of A. J. Baumgardner to said amended bill, depositions taken thereon, and ~~was~~ argued by counsel. On consideration whereof it is adjudged, ordered and decreed that said demurrer be overruled; that the injunction granted on said original bill be perpetuated except as to the \$400.00 hereinbefore decreed to E. W. Pennington on his petition; ~~that the said Baumgardner has~~

~~not established his claim~~
that the said plaintiff has the
right to offset the balance of
said judgment after the ^{payment of} \$400.00
~~paid to~~ decreed to E. W. Penning-
ton on his petition which fully
satisfies the said judgment
in favor of J. H. Pennington against
the plaintiff; and that the plain-
tiff recover from the said J. L. Pen-
nington the sum of ~~one hun-~~
~~dred and two and 75/100~~ dollars
and the costs of said ~~a~~
~~mended~~ original bill; that
the said Brungardner has not
proven his claim; and that
the plaintiff recover of the said
A. J. Brungardner the costs of
said amended bill; and that
this cause be stricken from the
docket.

N. L. Johnson

23 3 Decres

J. L. Pennington

En. C. O. B. No. 6 p. 24.

Enter

June 15 1899.

W. F. M.

N. L. Johnson Complt.,
vs. J. L. Huntington & cts } In Chancery

This Cause came on this day to be heard upon the ~~first~~ bill of the complainant and exhibits filed therewith, the answer of J. L. Huntington and replication thereto, the petition of E. H. Huntington, the amended bill of said complainant making said E. H. Huntington a party defendant to said bill, and the depositions of witnesses, and was argued by counsel. On consideration of all which and for reasons appearing to the court that as to \$400⁰⁰ of the judgment mentioned in said bill and the collection of which was heretofore enjoined, said injunction as to \$400⁰⁰ thereof is hereby dissolved; and it is adjudged, ordered and decreed that said E. H. Huntington recover from said N. L. Johnson the sum of Four hundred dollars with interest thereon from Nov. 7th 1895 till paid and execution may issue thereon ^{within 30 days} with no security to be taken. ^{and all other matters are reserved} And it appearing ~~that~~ from the pleadings and papers, and depositions in said Cause that one A. J. Bangardner perhaps have rights therein said plaintiff is required to

N. C. Johnson

as Secy

J. L. Huntington itak

Q.B. P. 419

enter this

June 4 1896.

W. E. M.

around her like making said Anna
garden a party Thirtie, justie which
is done this cause is continued.

A. L. Johnson Plff. } In Chy.
 Against }
 J. L. Perminington Deft

On the motion
 of the plff who this day presents
 her Bill praying an injunction
 to stay proceedings at Law, of
 the defendant on a Forthcoming
 Bond. An injunction is awarded
 the plff pursuant to the prayer
 of the Bill enjoining the defend-
 ant his agents & attorneys from
 collecting said judgment in
 the Bill mentioned until the future
 order of this Court. But the
 plff is not to have the benefit
 of this injunction until she con-
 fesses judgment on said Forth-
 coming bond and releases all
 error at at law thereon.
 And until she or some one for
 her intervenes a bond before the
 Clerk of this Court in a penalty
 of one thousand dollars
 conditioned according to Law to
 and also to pay said debt and said damages the execution
 only per form all orders ~~of the Court~~
 of this Court in reference to
 the injunction herein granted.
 And the plff can have process
 upon her Bill.

in said bond should the Court hereafter so decree

A. L. Johnson

Order for
Injunction

L. L. Pennington

March 7, 1896

Q.B. P. 379

Enter this
March 9, 1896
W. L. M.

To W.H. Johnson:-

You are hereby notified, that on May. 28th., 1896, at the law office of E.W. Pennington, in the town of Pennington Gap, Lee County, Virginia, and between the hours of nine A.M. and Five P.M. of that day, I shall proceed to take the depositions of J.D. Pennington and others, to be read as evidence in behalf of myself in a certain suit in chancery, now pending in the circuit court for Lee County, wherein, I am defendant and you are plaintiff; and if from any cause the taking of said depositions be not ~~commenced~~ commenced, or if commenced, be not concluded on that day, the taking thereof will be adjourned from day to day, from time to time and from place to place until the same shall be completed. This May, 23rd., 1896.

J.L. Pennington by

Pennington Eros. Counsel.

J. L. Prentiss
and notice to
take up -
N. L. Johnson

Executed on May
23rd, 1896, by de-
livering a true copy
of the within notice
to N. L. Johnson.

E. H. G. S. S.
W. P. Weston
S. L. Lee.

2)
Ques. 2.

Are you acquainted with J. L. Pennington, the defendant in this cause? What is your relationship to him? and how near do you reside to him?

Ans

I am acquainted with the said J. L. Pennington. I am his brother and have resided in $1\frac{1}{2}$ miles of him for about ~~six~~ years.

Ques. 3.

Please tell what you may know of the financial standing of J. L. Pennington, that is the debts he owes and their character, and what property he owns in his own right.

Ans.

From what I know and from what I have heard him say, he owes about \$1900⁰⁰ on which there are judgments. I have heard him say that he had given a deed of trust to secure J. L. Carter guardian a debt of about \$265⁰⁰, on about 417 acres of land on which said J. L. Pennington now lives. Again I have heard said Pennington say that he owed J. E. Parsons about \$1100⁰⁰ on a 400 acre tract of land, to E. G. Parsons about \$1400⁰⁰ on a 350 acre tract, and \$450⁰⁰ to Leburn White on a 64 acre tract, and \$650⁰⁰ to H. J. Morgan on a 120 acre tract. If he owes any thing more I do not know it.

According to my calculations of the

3)

tracts, he owns about 2483 acres of land. I think a fair cash value of this land would be about 88⁰⁰ per acre on an average. Something over 300 acres of this land has the coal right retained thereon. Most of said land has good oak and chestnut timber on it. Most of the poplar has been cut from ^{all} said land. Something like about six hundred acres of this land is cleared and is good farming land. I think at least three fourths of all his land if cleared would be good farming and grass land. State whether or not you know the said J. L. Pennington has any lumber in the Pocket-Country that manufactured from timber cut from the lands of E. S. Wax Carter Eldridge, Wm Eldridge, the Jesse heirs, Elijah Pruitt or Bartley tract? If so, how much is there of the same and where now situated?

Ques. 4.

Ans.

He has some lumber which came off the Pruitt and Jesse heirs land in the Pocket or Bartley Tract, and according to my estimation there ~~was~~ is 28 or 30 thousand feet of it. From what I could see of it, it looked like it might be log run. The sawing looked to be well done. And I think from what I could see of it, 15 per cent - would be 1 and 2's.

4)
One days
attendance
as witness
\$.50

50 percent-commons, and 30 percent-shipping culls. There was about-27000 ft. of this lumber poplar. This lumber was on the Jesse heirs land. This lumber could be delivered from where it is at to the Rail Road Station at Pennington Gap for \$250 per thousand ft.

And further this deponent says it not.

A. D. Pennington

E. W. Pennington another witness of lawful age being duly sworn deposes and says as follows:

On Nov 7 1895 J. G. Pennington by writing assigned and turned over to me the debt due him from N. G. Johnson arising out of a log and lumber transaction between himself and said N. G. Johnson, and about which there was then pending a suit in the circuit court of Lee County, which writing and assignment I here file as a part of my deposition, marked "A".

At the time said J. G. Pennington made said assignment, he owed me in my own right-\$1680 principal \$1800 principal as attorney, for a debt about-\$2500 judgment as commission. Since he made said assignment of said debt to me, some time in Jan. 1896, he paid me on the debt

5)

due me as commissioner \$48⁴⁴.
 The remainder of said debts is still
 due me. I think it was on the 15th
 or 16 of November 1895 I informed
 A. Johnson the husband and alleged
 agent and business manager of
 H. G. Johnson, that I had said
 assignment of said debt ~~from~~ said
 Pennington to me. In talking
 to him about the matter, as I
 remember he told me that the
 said John G. Pennington then
 owed him or his wife, I don't remem-
 ber which he said, about \$2000
 arising out of another lumber
 transaction between himself or
^{wife} and said J. G. Pennington.
 And which sum he proposed to have
 off-set against the said ^{debt} so assigned
 me. And at the same time he told
 me said Pennington had on the
 side tracks at Pennington Gap a
 lot of lumber on which he claimed
 to have a lien for his or his wife's
 debt, I don't remember which he said.
 But that John G. Pennington had
 contracted the same to Joseph G. Brown.

In a very few days after this
 conversation with Mr. Johnson, said
 Pennington and A. J. Baumgardner
 came to my office, and told me that
 he Pennington had promised Baum-
 gardner to pay him said Baumgardner

about \$250.00 of the said debt-provided it could be arranged with me about the matter. After talking with them some time about the matter, I agreed to take \$400.00 of said debt on my assignment, and Baumgardner could have the residue on his debt-if there was any. My \$400.00 was to be paid first.

And further this deponent-suits nat.
Ed. W. Pennington.

John L. Pennington another witness of lawful age being duly sworn deposes and suits as follows:

I am the defendant-in this cause. I owe the plaintiff all of her claim except-the \$2.20 charged April 22 1895; and the mule \$35.00 and interest on same \$2.10 charged Sept-28, 1895.

My recollection is that this mule was charged to my account and settled for long before that date. There ought to be a further credit on my account with said plaintiff of \$100.00 paid her by E. M. Spears through Joseph Lawton sometime in January 1896. This payment was made her with the express understanding and agreement that it should go on the account mentioned in her bill. This account grew out of a lumber transaction between myself and the plaintiff.

husband A. Johnson. and was
advancements made me by him
at her store. On this lumber contract
out of which the plaintiffs demand
grew, I yet have something like
30000 feet of poplar lumber in the
Pocket Country on the lands of the
Jesse heirs, and on which Johnson
has a lien for said debt.

Some time in January or February 1896
I went to said Johnson and told
him I was ready to deliver said
lumber now if he wanted it.

He replied to me that he did not
know whether he ought to take it.
This lumber was situated in a
hollow, and before it could be hauled
or was ready to be hauled, one Joseph
Watts put a saw mill below it and
stopped up the way with the mill,
logs and lumber. The mill and
the principal part of the lumber
sawed at this mill is still ~~there~~.

there. Then again the floods came
along about the first of April
and so washed out and stopped
up the roads as to make it im-
practicable to deliver said lumber
at Pennington Gap. This lumber
can be hauled from where it is
to the station at Pennington Gap
for \$2.50 per thousand feet.

8
I owe a considerable amount of money
about \$1900⁰⁰ judgments, about \$36000⁰⁰
vendors liens on lands, \$265⁰⁰
and deed of trust on 417 acres of
my land, \$1441⁰⁰ deed of trust on 134
acres of my land, but for this
debt of \$1441⁰⁰, the parties have good
collateral security in notes of
about \$1600⁰⁰, I own about 2400 or
2500 acres of land, worth a fair
cash value of \$8⁰⁰ per acre.

I also own subject to levy two
mules and a colt, two cows, two
yearling calves, two sucking calves
sixteen hogs that would average
about 80 pounds, two wagons, one organ
about \$100000 ft of lumber outside
of said 30000 ft. but on which there
is a lien of \$4.00 per thousand. I
think this lumber where it stands
is worth at least \$600 thousand
ft. I also have notes, bonds,
debts, etc. due me that are solvent
amounting to from \$1200⁰⁰ to \$1500⁰⁰.
This out side of the collateral notes.
On November the 7 1895, to secure
E. W. Pennington for various ^{sums} due
him I assigned to him the said
debt due me from N. G. Johnson and
which she has now enforced collection
of in this suit. Not long after this
assignment was made, by and

9)
by and with the consent of E. W.
Pennington I agreed with A. J.
Banngardner that he should have
on a debt I owed him of about
~~\$250~~ \$250⁰⁰ the residue of said
debt due me from the said plaintiff
after said E. W. Pennington
should be paid \$400⁰⁰. The said
\$400⁰⁰ was to be paid E. W. Pennington
first.

I owe a few debts outside of those
above mentioned but they are of the
same class as this plaintiff's demand.
There are no judgments on them or
liens to secure them.

And further this deponent will not.

J. S. Pennington
Joseph Hawson another witness
of lawful age being duly sworn
deposes and says as follows:

Some time in the fall of 1895
I for E. M. Spears bought from
J. L. Pennington about 30000
ft. of poplar lumber which
was then stacked on the side
track of the L. & N. R. R. at Pennington
Gap Va. and I advanced him
on this lumber about thirty
dollars. Soon after I had bought
said lumber I was informed
by A. Johnson that it was lumber
he had bought and had advanced
money on and he had a written

contract, recorded giving him a
 lien on said lumber for his
 advancements. This lumber stood
 for some time at Pennington & Co
 when finally one day said Johnson
 said Pennington and myself,
 agreed with each other that I
 take, measure and inspect the
 same, and out of the price
 thereof pay to said Johnson
 \$1000 to go on the advancements
 made by him on said lumber,
 and the residue to said Pennington.
 That I did so take, measure and
 inspect said lumber, which at the
 price agreed on between me and said
 Pennington amounted to about \$1500
 and on or about Jan 7 1894, I paid said
 Johnson \$1000 and J. L. Pennington
 the residue.

One days
 attendance
 as witness \$5.00

And further this deponent says that nat.

Jos. Lawson

I, J. D. Noel a Justice of the Peace
 in and for the county of Lee in
 the state of Virginia, do hereby
 certify that the foregoing depositions
 of J. D. Pennington, E. W. Pennington,
 J. L. Pennington and Joseph
 Chawson were duly taken sworn to
 and subscribed before me at the place
 and time mentioned therein and in the
 caption thereto, pursuant to the annexed

11/
Notice. In witness whereof
I have hereto set my hand and
seal on this 28 day of May, 1896
at the town of Pennington Gap
aforesaid.

J. C. Noel D.P. Seal

Time employed 4 hours.

J. G. Pennington
Advs Depositions.

H. G. Johnson
Received from J. G.
Noel the J. P. before
whom taken & filed June
the 1st 1896
W. B. Muncy Clerk

Costs.
Justice \$3.00
Witness 1.00
Sheriffs .20
\$ 4.20

Present A. G. Prudenmore for
the plaintiff N. G. Johnson and
E. W. Pennington for the
defendant J. G. Pennington

By consent of the parties no caption
is written and by like consent
of parties J. G. Pennington is
~~examined~~ examined by the plaintiff.

J. G. Pennington being duly
sworn deposes and says:

Ques. 1.

I notice Mr Pennington in your
deposition that you state your
land is worth \$8⁰⁰ per acre.

Do you mean to say that that
is its market value or its actual
value that is your opinion?

Ans

I go by what it cost me partly.
It cost me from \$8⁰⁰ to \$12⁰⁰ per
acre and I think it ought to be
worth at least \$8⁰⁰ now.

Ques 2

When you purchased the land
was there not a great deal
of poplar timber on the land
and has that not been largely
taken off?

Ans

Partly so. That is why I make
a reduction in the price?

2)
Ques. 3.

Please state any lands that-
you know of being sold in
that-neighborhood in the
last four years at as much
as \$8⁰⁰ per acre.

Ans.

W. H. Parsons sold 412 acres
with poplar timber off to Cecil
Parsons at \$10⁰⁰ per acre.

Ques. 4

Did he pay cash?

Ans.

I don't know. I suppose he swapped.

Ques. 5-

I want to ask you about cash sales
or sales on a credit for which
cash has afterwards been paid.

Ans.

I don't know of any that I can
think of now.

Ques. 6

Have you ever made a close
calculation of your indebted-
ness?

Ans.

Not exactly.

Ques. 7

I will ask you if there has
not been in the last few years
several ~~judgments~~ ^{executions} returned against
you. "No property found"?

Ans.

I have had one of a \$24⁰⁰.
But I told the officer to come
on and I would give him
a forthcoming bond. I had at-

the time two pair of mules
and some cattle on which the
execution could have been
levied, one of \$350 was as I suppose
returned "No property found."

Ques. 7

Have you been able in the
last two or three years to
meet your obligations and
pay your debts promptly?

Ans.

I have not, mostly through
the fault of others by not paying
me.

Ques.

Please state the persons on whom
you hold ^{fifteen} twelve or ~~thirteen~~
hundred dollars in solvent-
bonds that you have not
pledged as collateral?

Ans.

I can't state all of them. I have
\$200 or \$300 judgments against
Jacob Wilt's estate; I hold a hundred
dollar note on James Coffman.
I don't know whether he is
good or not, but he says
that he will pay it. W. R.
Johnston a lien on personal
property to the amount of about \$350.
The balance that I spoke is in
small notes and accounts.

Ques.

I notice you speak of credit of \$100 paid by you to A Johnson since the rendition of the judgment in this cause. Was that not paid on a lumber contract between yourself and A Johnson alone?

Well as I understood it Joseph Lawson was to pay Mr. or Mrs Johnson a hundred dollars to go on my account there. Mr Lawson said he paid it but I have no receipt to show it. Mr Johnson ^{claimed to Mr. Lawson that he} had a lien on the lumber and had paid or advanced money on it. All I asked for out of it was to get money out of it to pay on the purchase price of the the timber.

Ans.

Are you positive that there was a contract about this ~~to~~ that it should be paid on the account mentioned in the bill?

My best recollection is that there was. Mr. Johnson and my self was with Mr Lawson the lumber yard. I notice Mr Pennington that put your indebtedness at \$620.25 on

5

over. Is not your main dependence to pay this indebtedness by sales of land?

Ques

No Sir. It is not my object at least. What resources have you beside your land and other matters mentioned in your deposition to pay your indebtedness? I intend to try to collect what is due me, to pay on it, work timber that I have on hand, sell lumber I have no other property not mentioned in my deposition.

Ques

When did you make the assignment to Mr. Pennington, before or after you obtained judgment?

Ans

Before

What was the consideration?

He had a judgment against me as commissioner, I think in the Jesse estate. I believe the amount of the judgment was about \$250.00. He also had a lien on a pair of mules for about \$180.00. He had a note against me of about \$40.00. He had attorneys fees against me to the amount of about \$125.00 or \$150.00.

Ques.

Why did you not pay him or
execute your note for these amounts
instead of making the assignment?

Ans.

I can assign no further reason than
that I had promised it to Mr Penning-
ton. He had held up his judgment
against me and had put me
to no more trouble than possible.
I did not do it to beat Mr Johnson
out of any thing. I had talked with
Mr Pennington and promised to
make him this assignment two
or three months before that.

Ques.

Is your land all in one tract or
in separate tracts? If your answer
is separate tracts, name them and
the number of acres in each.

Ans.

They are in separate tracts.
No 1 I got from E. G. Parsons.
it contains 288 acres, ~~No 2 I got~~
No 2 from J. E. Parsons, contains 344 acres
No 3, from $\frac{2}{3}$ of Jesse estate, 126 acres.
No 4, from Joseph Doss, 12 acres.
No 5. Leburn White 54 acres
No 6. G. W. Garret 120 acres
No 7. William Garret 247 acres
No 8, $\frac{1}{2}$ interest in L. D. Thomas estate. 126 acres.

7
Ques.

No. 9. Home tract - 1165 acres.

I notice you say you owe about \$3600⁰⁰ purchase money on this land. Does that include interest up to date? or ~~does it~~ ^{is there}.

There is some interest to be added to it. Some bears no interest, some bears interest - one year and other parts bear interest - 2 years.

Ques.

I notice you say there are judgments against you to the amount of about \$900⁰⁰. Does that include cost and interest or merely the judgments?

Ans.

It contains cost and interest I think. I base my answer on Mr. Jones' report.

Ques.

Are you certain that the \$35⁰⁰ for the mule heretofore mentioned ~~for the~~ has been settled?

It is my opinion that has been settled but I am not positive about it.

Mr. Johnson has me ~~paid~~ charged with paying Marion Kirk \$34.95 and 5 cents worth of apples. Kirk and myself in our settlement cannot find any thing where Kirk ever got that amount at Johnsons.

and further this deponent-
says the nat.

J. S. Pennington

4. Johnson another witness of
lawful age being duly sworn
deposes and says as follows:
I here show you an account-
in favor of Mrs. N. C. Johnson
against J. S. Pennington
amounting to \$883.46 subject-
to credits amounting to \$396.69
leaving a balance of \$486.77 all
of which is admitted to be correct-
by J. S. Pennington in his
deposition ~~made~~ ⁱⁿ item charged
April 22-1895 of \$2.40 for rolling
logs. and a charge of Aug 24 1895-
for a mule of \$35.00 and interest on
the same of \$2.30. Please state
whether or not this account is
correct and unpaid, and
explain these two items.

The account is correct and
unpaid. The item of \$2.40 is charged
by reason of the logs being left in
such a shape that I had to
pay the man that sawed them
extra this amount I think.

Daus

9
In regard to the item of \$35.00 Mrs. Johnson has a judgment against W.R. Johnston, and the officer had levied on a pair of mules. The transaction took place about 2 years ago during a previous contract in relation to lumber with J. G. Pennington. The said Pennington came to me and agreed that he should be charged with the value of the mules which was agreed to be \$35.00 and the mules were released. ~~This~~ item is correct and unpaid.

Last year we had some dealings with W.R. Johnston and in making a settlement W.R. Johnston mentioned this mule matter. I had forgotten to credit him with the amount or charge it to J. G. Pennington. Afterwards Mr. Pennington and I went over the old account and could not find the item of \$35.00 charged. He seemed to think I had given Kirk a check for that amount as there were several checks of that amount charged at various times. He agreed that if I would

look up the checks as charged and they showed that they had been paid that he would acknowledge that the debt was unpaid by him. This we did and found the checks all paid. If Pennington had ever paid it, it would appear on his account.

Ques.

State if you know what would be a fair cash value of the real estate of J. G. Pennington.

Ans

I have run a great deal of the land and would not think that it would bring over from \$3⁰⁰ to \$5⁰⁰ per acre.

Ques.

State if you know what is the indebtedness of J. G. Pennington and whether or not the amount owned by him would pay his indebtedness or whether his estate is solvent.

Ans

I don't know about the amount of his indebtedness or the amount of his assets. While we were dealing & paid off at different times, executions in the officers' ^{hands} against J. G. Pennington, and know of other debts that have been in process of collection for one and two years

that ~~are~~ still unpaid unless paid
very recently.

Ques

You will please explain the \$100⁰⁰
credit paid by Joseph Lawson and
claimed by J. L. Pennington as a
credit on this account; since the
rendition of the judgment against
Mrs. Johnson?

Ans.

At the time the \$100⁰⁰ was paid
there was nothing said as to where
the \$100⁰⁰ ~~deb~~ should be paid.
I credited it in the following
manner: Something over a year
ago I sold J. L. Pennington
a lot of cattle for \$0 and
took a deed of trust to secure
the pay therefor. Sometime after
this sale, said cattle were levied
on to satisfy a debt due from
said Pennington and as his
property. Mr Pennington request-
ed me to institute proceedings
to enforce my deed of trust. Before
however the sale could be stopped
~~one of~~ the best yoke had been
sold. Another one of said oxen
died. Then at the end of about
ninety days the residue was turned

over to me. I do not think that any price was fixed for the residue so turned over to me. For these three oxen thus lost and for the use of the others for ninety days, I considered there was due me at least \$100⁰⁰, I accordingly held this \$100⁰⁰ as a credit in that transaction. Myself and Mr Pennington however have never had any settlement about this transaction. If I should not be entitled to this \$100⁰⁰ or any part of it, I am willing that any sum found due from me to Mr Pennington in this matter may be credited to said Pennington on Mrs. Johnson's account. This whole transaction however was upon a trade between Mr Pennington and myself and not Mrs. Johnson. And I think the \$100⁰⁰ is due me.

Ques. State whether or not the account mentioned in Mrs Johnsons bill grew out of your separate transaction or was entirely Mrs. Johnsons:

Ans.

I t was Mrs. Johnsons account, and

Dues.

so far as I acted in the matter
 it was entirely as her agent.
 I notice in Mr. E. W. Pennington's
 deposition that he states that
 on the 15th or 16th of Nov. 1895: he
 notified you as the agent of Mrs.
 Johnson that said ^{judgment} ~~debt~~ had
 been assigned to him: that
 he further stated that you said
 at that time that J. L. Pennington
 owed you or your wife about \$2000
 arising out of another lumber
 transaction. If ^{you} had such a
 conversation please state to what
 you referred and explain that
 matter fully.

Mrs.

When Mr. Pennington came to me
 we talked about the lumber
 J. L. Pennington claimed to have
 and I think my estimate was that
 he would owe ^{Mrs. Johnson} ~~me~~ that much if
 she should get the lumber.
 (I mean by this the lumber he let
 Gawron have and that which he
 claims is still in the pocket)
 I think Mr. Pennington claimed that
 the judgment had been assigned
 to him to the amount of about

\$400⁰⁰ and I told him at that-
time that Mr Pennington had
refused to let me have the lumber
and it was our intention to credit
this account on the judgment.
Mrs. Johnson before the institution
of this suit tendered Mr. J. L.
Pennington the account as
a credit upon his judgment.
He refused to accept it saying
he would bring lumber in to
pay it the next week, but he
failed to do it.

I never had any knowledge
of the assignment of any part
of the judgment to A. J. Baumgard-
ner, until after I had heard read
the deposition of the defendant in
this cause.

X Examination.

Ques.

Was not the arrangement made
with you whereby the account
of the plaintiff in this bill
was made, and was it not
agreed that whatever was
getting from the plaintiff
should be considered as an
advancement on the lumber

contract - between yourself and J. G. Pennington, dated Jan 28 - 1895 (a copy of which is filed by the defendant in his answer marked "E")

Ans.
Dues 12.

I suppose it was.
Then by virtue of said contract and agreement - you had a lien on all lumber mentioned in the contract between yourself and J. G. Pennington or at least claimed a lien thereon for said plaintiff's debt did you not?
The foregoing question so far as it asks as to the legal construction of said contract being a lien is objected to.

Ans.

Proclamation of Success

We claimed a lien so far as the ^{at prices mentioned in contract} lumber would pay. Mr. Pennington however claimed a prior lien for the purchase price of the timber. This lumber was to be delivered to me, but was delivered to Joseph Lawson. I never knew the amount delivered to said Lawson. I read his deposition.
After It was estimated to amount to be about \$200 or one hundred of

which was going to Mr E. W. Pennington, the other \$100⁰⁰ was paid to myself.

Ques.

Have you not for the last three or four years principally done and transacted the business of your wife Mrs. N. G. Johnson?

Ans.

Yes sir.

Ques.

From the time you delivered said cattle to J. G. Pennington until they were returned to you what do you consider the use of them worth and how many did he return unto you?

Ans.

I would think they were worth forty dollars for that length of time. The cattle were returned in very poor condition.

He returned seven head.

Ques.

When you delivered these cattle to said Pennington was it upon a sale, a lending or a hiring? (The foregoing question is objected to because the contract was in writing and it alone can speak.)

Ans.

It was on a sale as well as I remember.

Ques.

If the contract was in writing

where is that writing?

It is filed ~~in~~ the injunction suit of myself against Kincaid Ball and others and to which I refer the court for inspection.

When said cattle were returned to you did you not agree to allow Mr. Pennington \$140⁰⁰ on the \$200⁰⁰ he had agreed to give for all of them?

I don't think I did.

Don't you remember giving a receipt for the \$40⁰⁰?

I don't think I did. I think I gave him a receipt for so many stock.

Do you know how much the two cattle sold for, which was sold before the injunction proceeding could be had?

I don't know only what I heard on the street. The report was that they only brought \$38⁰⁰.

Did J. L. Pennington owe you at the time said \$100⁰⁰ was paid by Lawson except the balance due on said cattle, if so what?

No Sir. Not me individually.

Have you examined exhibit 'D' filed in the answer in this cause & know that the articles therein charged against Pennington as to amounts, date & all are correct.

This question is objected to because said account is all admitted except two items. see Pennington's deposition Pridemore for Plff.

I have examined it & believed it to be correct. It corresponds with our books.

To whom did you pay the \$2²⁰ charged April 22nd 1895?

I think it was paid to Watts.

On which fund was it paid?

I don't remember which.

Did you not the Plaintiff in this case hold most of this account against the said Pennington at the time A. M. Goins was taking the account in the case of N. L. Johnson ads J. L. Pennington?

This question is objected to because admitted in the Bill. P. for Plff.
I expect the entire account had

been paid by the Plaintiff at the time. There was a settlement between Pennington & Walts not then made. I was paying Walts' men & J. L. Pennington, was, as I understood it, to pay out of the lumber & that settlement was not made, as I remember, until after that term of court, Nov. 1895.

Had this settlement been made at the time E. P. Pennington informed you of the assignment of the judgment to him?

It had not. Mr. Walts had given me an order on Mr. Pennington during the time the depositions were being taken in that case & Mr. Pennington would not accept. The order amounted to about \$190⁰⁰. Some time afterwards John Pennington came in our store & either gave an order to pay Walts or told me to pay him the amount charged in my account, \$176¹⁶. This was on 18th Dec. 1895.

Have you examined the books of the plaintiff to see whether or not there is a charge against Pennington for \$34⁹⁵ paid M. R. Kirk deputy

20

thrift & sent for apples?

I will have to look that up,
to answer correctly. I have now
seen my book & on April 29th
1893 I find said ~~payment~~ charges.

This whole transaction charged
in account was long after
this, in the summer of 1894.

Who delivered to you the \$100⁰⁰
paid on said lumber heretofore
spoken of?

Joseph Lawson.

Was John Pennington present when
it was paid?

No Sir.

All that was said about said
lumber between you, Lawson & Pennington
when you agreed to let Lawson have it, was
said before the actual payment of
the money, was it not?

It was.

Re-examined See Chief
Spec. Explain the contract between
said parties. or since seeing
the contract dated Jan. 25/93
this question is waived.
Ques. Did you ever refuse to take

any lumber offered you by
said Pennington on said contract?

~~Ans.~~ No Sir; I would have been
glad to have gotten it and
applied it on said account.
I have given him one lot for
one I did get from him on
this account, and called
transaction before alluded to.

And further this deponent
saith not.

A. Johnson

Joseph Watts another witness
of lawful age being duly
sworn deposes and says as follows:

Ques. 1.

Please state whether or not
Mr. Watts, you have examined
a lot of lumber containing about
50,000 feet and situated on
what is known as the Jesse
land and in the Puckel country
and belonging to J. B. Pennington?

Ans.

I have & viewed it.

Ques.

Please state what is the grade
of the lumber that remains there
and what ^{is} the worth of lumber
per thousand feet if delivered
at Pennington Gap?

Ans.

Mostly mill culls, & had it stuck for

that: There is probably about 10 per cent of it consisting of six inch strips that will probably grade "Common". The good lumber Mr. Pennington had ~~it~~ set apart to itself to haul to Pennington Gap. I separated it according to Mr. Pennington's orders. The mill culls would be worth \$3.00, the commons would be worth from \$11.00 to \$13.00 per thousand feet.

Ques. Have you experience as a lumberman and acquainted with the business?

Ans. Yes I have been in the lumber business all my life.

X Examination.

Ques. What class of logs were those sawed of which this lumber was cut?

Ans. Some of them were pretty fair logs.

Ques. Are you a Sawyer also?

Ans. Yes Sir.

Ques. About how many thousand feet did you saw at this place ^{and} of this lumber?

Ans. I think about 70000 feet.

Ques. Did you saw these logs properly?

Ans. I sawed them according to order.

Ques. What were your orders for sawing them.

Ques.

I don't just remember what the order was, but I think it was to be cut into $\frac{1}{4}$ boards. The hearts were to be cut into 8's. I cut a good many of them that way. But I think he stopped that.

Ques.

Have you sawed any other lumber from timber in that country?

Ans.

I have sawed another set in about half a mile of the one just spoken of.

Ques.

In your experience as a sawyer what is your observation as to the per cent of mill culls in a set of tolerably fair logs?

(Above question objected to because immaterial and irrelevant)

Ans.

It depends on conditions.

Ques.

Then you can't tell? ~~It depends on~~

It depends on condition.

Ques.

Mention some of the conditions whereby you can't tell how they will run.

Ans.

In the first place you have got to know what a man means by fair logs; again it depends on what it is cut into. Thicker the stuff, the more mill culls.

Ques.

Do you know ~~two~~ inspect-logs
by Dayles rule?

Ans.

I do, I know how to measure them
rather.

Ques.

Were these logs inspected as to grade
before sawed?

Ans.

Nat as I know of.

Ques.

In your opinion what percent
of these logs were one and two?

Ans.

From 15 to 20 percent. I should think
about 15 percent.

Ques.

In a cull log is there not always
more or less of shipping culls, common
and better?

Ans.

In some there is ~~it depends~~
and some there is not. It depends
on the quality of the culls?

One days
attendance
as witness \$50

And further this deponent says
not.

J. Watts

J. L. Pennington recalled by defendant
and being duly sworn deposes and
says as follows:

Ques.

In turning back the seven culler
spokes of by Mr Johnson, how
much was he to allow as a credit
on the \$200 or the purchase price

of the five yoke?

Ans

I have his receipt at home for these cattle at \$20⁰⁰ each or \$100⁰⁰ for them all that is the seven that was returned. I will send the receipt down as soon as I go home:

The above question and answer objected to because the paper will show for itself.

and further this deponent says the rat.

J. S. Remington
~~I J. C. Noel a Justice of the Peace in and for~~

Virginia Lee county to wit:
 I J. C. Noel a Justice of the Peace in and for the county of Lee do hereby certify that the foregoing depositions were taken, sworn to and subscribed to before me in the law office of A. G. Pridemore at Jonesville in said county

Given under my hand this the 3rd day of June 1896.

J. C. Noel J. P.

N. L. Johnson
vs } Depositions

J. L. Pennington

Received from J. L.
Hall the J. P. before
whom taken and
filed June 3rd 1896

A. B. Munsey Clerk

Costs.

Justice \$4.50

Witness .50
\$5.00

N.L.Johnson)
 vs.) IN CHANCERY.
J.L.Pennington)

The depositions of C.T.Duncan and others, taken before me
A.B.Munsey, ~~XX~~, a com-
missioner in chancery for the Circuit Court, for Lee county, Va.,
pursuant to agreement, on the 26 day of May, 1897, to be read as
evidence on behalf of the plaintiff in the cause in chancery now
pending in the circuit court, in which N.L.Johnson is plaintiff and
J.L.Pennington is defendant. These depositions are intended to apply
particularly to the claim of A.J.Baumgardner set up in said cause.

C.T.Duncan, a witness of lawful age, being duly sworn, deposes
and says:

Some time after the term of the circuit court when J.L.Penning-
ton obtained a judgment set out in the bill in this cause, A.J.Baum-
gardner came to my office and said that J.L.Pennington was indebted
to him in some considerable amount, not now remembered by me, and
he told me that Mr. Johnson, the husband of, and agent for, N.L.Johnson
had sent him to see me to see if Mrs. Johnson could not take an as-
signment of enough of his debt against said Pennington, together
with her account against him, to offset said Pennington's judgment
against her. My best recollection is that Mr. Baumgardner talked to
me twice, and while I cannot remember the dates of these conversations,
I feel confident that the last one was as late as the Dec. term, 1895,
of the county court. Mr. Baumgardner in neither of said conversations
intimated to me that he had any assignment from J.L.Pennington,
or from any other person, of any part of the judgment of said Pen-
nington against Mrs. N.L.Johnson.

X Examination.

Ques. 1, by deft.

Was the conversations between you and Baumgardner before or
after the date of the judgment of Pennington against Johnson?

Ans. Both conversations were some time after the date of the judg-
ment.

Qus. 2. Were said conversations before or after Xmas, 1895?

Ans. I think before Xmas.

And further this deponent saith not.

C. T. Duncan

A. Johnson, another witness of lawful age, being first duly sworn, deposes and says:-

Ques. 1. Did A.J. Baumgardner, or any one else, ever notify you, as the agent for N.L. Johnson, that J.L. Pennington had assigned to the said Baumgardner all, or any part, of a debt or judgment due by the said N.L. Johnson to said J.L. Pennington? State as near as you can the time of the first intimation you had of Baumgardner's claiming such assignment.

Ans. A.J. Baumgardner, nor no one else, notified me of said assignment, though I did gain information from the papers of this Injunction suit that Baumgardner claimed an assignment, this notice was some time during 1896.

Que. 2. Did Mr. Baumgardner ever try to sell you any part of his claim against J.L. Pennington? if so, when and where, and state all about it.

Ans. Baumgardner some time after J.L. Pennington had obtained judgment, came to me and proposed to sell me his claim against J.L. Pennington. We met at Jonesville for the purpose of consultation with Judge Duncan about the matter, but Duncan was not at home. Some days after Baumgardner came to Pennington Gap to see me again on the same business, and I told him that if Duncan would so advise, I would take his claim. Some time during the conversations between Baumgardner and me, Baumgardner said that Pennington had promised him that if he secured a judgment against N.L. Johnson in that suit that he should have his debt, but that now he had sold the judgment to E.W. Pennington, and that he believed that J.L. Pennington had no intention of paying him; and he proposed to sell me his debt.

Ques. 3. Were you present when Mrs. Johnson presented to J.L. Pennington her store account against him and asked him to give her credit for same on his judgment against her? If so, state whether said J.L. Pennington said to her that he had assigned said judgment to any one; and if so, to whom?

Ans. I was present; Pennington said that he had assigned the judgment to E.W. Pennington. This was after an execution had issued against N.L. Johnson on Pennington's judgment.

Ques. 4. At that time did the said J.L. Pennington intimate that R

3.

A.J. Baumgardner had been assigned any part of said judgment?

Ans. He did not.

X Examined.

Ques. 1. At the time the assignment was made to E.W. Pennington, of which he notified you as you state in your former deposition, was not the account that J.L. Pennington then owed you, due to you upon a separate and distinct transaction, and for advancements made to him on another lumber contract, other than the one upon which he sued you and obtained the judgment?

Ans. Objected to by plff. because formerly adjudicated.

Ans. It was.

Re-Examination

Ques. J.L. Pennington claims that he has lumber to pay your acct. filed with this bill as per contract, and also claimed that when the roads were in condition he would deliver. Please state whether the roads have been in condition since he made such claim, also the character of the lumber he has on hand.

Ans. I can't state of my own knowledge ^{character of} the lumber. It is situated about eight miles from Pennington Gap, in the Pocket country. It has been about fifteen months since he made that statement, and he has failed to deliver any part of the lumber, and in fact he refuses to deliver it. The roads have been in reasonably good condition to deliver the lumber. *I am informed the lumber is well cut & ready.*

And further this deponent saith not,

A. Johnson,

STATE OF VIRGINIA, COUNTY OF LEE, to-wit:-

I, A.B. Munsey, a Commissioner in Chancery for the Circuit Court for the County of Lee, do hereby certify that the foregoing depositions of C.T. Duncan and A. Johnson were duly taken under oath, by agreement of the parties, and subscribed before me, and at the time and place as in the caption mentioned.

Given under my hand this the 26 day of May, 1897.

A.B. Munsey,

Commissioner in Chancery for the
Circuit Court Lee County, Va.

OFFICE OF THE CLERK OF THE
COMMISSIONER IN CHARGE FOR THE

Given under my hand this 15th day of May, 1897.

and signed as the auditor certified.
Witness of the parties and myself before me, and of the first
three of the names and A. Johnson were duly sworn under oath of an
for the County of Cook, do hereby certify that the foregoing report
of A. Johnson is a true and correct statement of the same for the County of Cook
State of Illinois, County of Cook, do hereby certify.

The further facts herein set forth
against the same.

to deliver it. The same have been in possession of the County of Cook
has failed to deliver the same to the County of Cook, and in fact he received
has been about fifteen months since he was first informed, and he
report of the same from the County of Cook, in the County of Cook. It

N. L. Johnson
vs. J. L. Pennington
J. L. Pennington

Depositions of
A. Johnson et al
on the Baumgardner
Claim.

Taken before me as
Clerk in Chicago & filed
May 26" 1897
A. B. Munsey Clk

Costs \$150

and the same have been in possession of the County of Cook
has failed to deliver the same to the County of Cook, and in fact he received
has been about fifteen months since he was first informed, and he
report of the same from the County of Cook, in the County of Cook. It

and the same have been in possession of the County of Cook
has failed to deliver the same to the County of Cook, and in fact he received
has been about fifteen months since he was first informed, and he
report of the same from the County of Cook, in the County of Cook. It

Sept. 28, '96

The Deposition of J.L. Pennington and others taken before me, A.B. *Courier in Chancery*
Muncy ~~clerk~~ of the Circuit Court for Lee County, pursuant to *agreement*
of Attorneys, to be read as evidence in the behalf of A.J. Bumgardner,
in a certain suit in pending in the Circuit Court for Lee County of
N.L. Johnston vs. J.L. Pennington et al.

Present, Judge C.T. Duncan, for N.L. Johnson,

J.L. Pennington for himself, and

A.M. Goins and R.L. Pennington for Bumgardner.

The witness, J.L. Pennington being first duly sworn, deposes as follows:-
1-State all that you know in reference to the assignment made by you
to A.J. Bumgardner of a debt due you by N.L. Johnston about the latter
part of the year, 1895?

Ans. about ~~the~~ latter part of December, 1895, A.J. Bumgardner came to see
me at my house concerning a judgement I had against N.L. Johnson, and
which I had assigned to E.W. Pennington, I told Mr. Bumgardner that I had
assigned the judgement to E.W. Pennington, and that I would go down and
see him, and see if he would not let him, Bumgardner, have part of this
money, and when I got to E.W. Pennington's, he had gone to Atlanta Ga, to
the fair, and some one told me that he would be back the following Sat.
morning, myself and Mr. Bumgardner agreed to meet there again on that day
and when we came back there on that day we saw Mr. Pennington, and he agree-
ed to let Mr. Bumgardner have all of the debt but \$400.00, and that
would be about \$200.00 that Mr. Bumgardner was to get; some time before
or after this transaction, *I don't remember which* Mrs. Johnston called me in the store and handed
me a paper, or held it out to me in her hand, I did not take hold of
the paper, and which paper she said was my account with the store, said
take this and give her credit on the judgement I had against her, I told
her that I had assigned it away to another party, or parties, I don't
remember which, I told her that I had lumber in the mountain to pay off
the account under contract between me and Mr. Johnston, as I understood
the contract between me and Mr. Johnston, this account was made at the
store on account of that contract; part of the account that Mts. Johnson
had against me I deny, to the amount of ~~\$322.40~~ \$39.40; The assignment ~~in~~
both to Pennington and to Bumgardner were made previous to this bill
of Injunction.

Cross-Examination

1-

Was the assignment which you say you made to A.J. Bumgardner in

writing?

Ans.- No, it was nothing but an agreement verbal, that Pennington should pay him the remainder after he got \$400.00

2- This agreement as I understand you was made after E.W. Pennington returned from the Atlanta fair?

Ans. Yes, and on the same day that he returned, as well as I remember.

And at present, further this deponent saith not.

A. E. Pennington

The further taking of these depositions are postponed till

Sept 30, 1896.

A. B. Mursey Com. in Chan.

Met by agreement on the 25th day of Oct. 1896 at the office of
A. M. Goins.

A. B. Mursey
Com. In Chan.

Present, Goins and Pennington for Bumgardner, and
Judge O. T. Duncan for Plaintiff.

A. J. Bumgardner, a witness of lawful age being duly sworn, deposes
as follows:

Ques. 1- Please state whether or not J. L. Pennington ~~was~~ assigned to you, about the latter part of Dec. 1895, any debt, judgement or part of
vs N. D. Johnson
either to you, if he did, please state all you know about it, why the
assignment was made to you, when it was, and whether or not you ever ~~xxx~~
notified N. D. Johnson that the assignment was made to you, and when you
gave him the notification?

Ans. He did assign me something like \$200, vs Johnson, it was about the
last of December, 1895, J. L. Pennington owed me a debt of something like
\$500. and this assignment was made in part payment of debt which he
owed me, provided J. L. Pennington gained the suit which was then pending
to recover a debt which he then claimed against N. D. Johnston, and on
which he afterward obtained judgment, as I understand. E. W. Pennington ~~was~~
was to have a certain sum out of the judgment when obtained and I was
to get the remainder. I can not state that I notified Johnston that
day, but I am confident that I did do so within a week, several times
after this I talked with A. Johnston in regard to the debt, and told him
that I was to get a certain portion of the debt provided Pennington
should get it, and one time ^{afterward} he came to me and wanted to purchase my
claim, or a part thereof, and I told him that I would not sell part
without selling him all.

I did not notify N.D. Johnston in person, but it was her husband and agent that was transacting her business at that time, as I understood, who is A. Johnson, spoken of above.

At the time the assignment was made it was made in the presence of E.W. Pennington and by his consent. Previous to this time MR Pennington had taken an assignment, as I understood from the parties, of all of the debt, but at this time agreed that J.D. Pennington might assign me all over, I think, \$400;00

Some time previous to the assignment made me as mentioned above I had a conversation with A. Johnston Agent of N.D. Johnson (as I understood) and told him I was going to try to get J.D. and E.W. Pennington to let me have part of the debt due to J.D. Pennington, and he said that he would as soon pay me as any one, and that that would be all right.

Cross Examination.

Ques. 1- Was the assignment made by Pennington to you of which you speak in your examination in chief, in writing?

Ans. It was not.

Ques. 2- Was this agreement between you and J.D. Pennington before or after Xmas.?

Ans. It seems to me that it was a few days after Xmas.

Ques. 3- Was the sum thus assigned to you part of a judgment already obtained by Pennington v. N.D. Johnson, or was it part of a debt for which he had suit pending v. her?

Ans. It was a part of a debt for which he had suit pending.

Ques. 4- In your conversation with A. Johnston, when he proposes to buy a part of your claim against Pennington, was he not proposing to buy it to defeat E.W. Pennington's Assignment?

Ans. My idea was that he was trying to beat J.D. Pennington.

Ques. 5- How long before you got your assignment was it that you had this conversation or these conversations with A. Johnson.?

Ans. I could not state exactly, it was something like a month or so

Ques. 6- Was it before or after the Nov. Term of the Circuit Court?

Ans. ~~Before~~ After, I think, I am not certain.

Ques. 7- Was it before or after E.W. Pennington got his assignment?

Ans. It was afterward, I think I am not sure

~~Ques. 8~~ And further this witness saith not.

A. M. Goins

Adjourned by consent till October 30, 1896.

Virginia, Lee County, to-wit:
I, A. B. Muncy, Clerk of the Circuit Court for Lee County, do certify that the foregoing depositions on agreement of parties were taken before me, under oath and subscribed to by the parties and at the time and places above mentioned. Given under my hand this
October 26th 1896.

A. B. Muncy
Commissioner in Chancery

J. L. Pennington
~~and~~ Depositions
R. L. Johnson

Taken before me as
Commr in Chancery & filed
Oct. 26th 1896
A. B. Muncy Clerk

Comrs fees \$3.00

Virginia. Lee County-to-wit:-

I, J.D. Pennington, do hereby solemnly swear that I am a brother of John L. Pennington; that I live in the same community in which he lives-, the "Pocket" country, in Lee County; that I am acquainted with the lands he owns, which will amount to not less than 2000 acres, and which at the least is worth \$5.00 per acre; and that from what I know of his financial affairs I don't believe he owes more than \$5000.00. I think I know of about all he owes. I further swear, if he has ^{nr}ever tried in any way to shift or sham away his property, or tried to get it out of the reach of the law to avoid the payment of any debt, I have never heard of it. So help me God. This the 9th day of April, 1896.

James D. Pennington

Virginia. Lee County, to-wit:-

I, A.G. Hyatt, a notary public, in and for the County and State aforesaid, do hereby certify, that J.D. Pennington whose name is signed to the foregoing affidavit, personally appeared before me in my County aforesaid, and made oath to the truthfulness of the same in due form of law. Given under my hand this the 9 day of April, 1896.

A. G. Hyatt N.P.

Virginia, Lee County, to-wit:-

I, E. W. Pennington do hereby swear that on Nov., 7th., 1895, J. L. Pennington made an assignment to me of his debt on N. L. Johnson arising out of a lumber and log contract, and about which there was then a suit pending in the Circuit court for Lee County on the law side thereof; that this assignment is in the following words, letters and figures, to-wit: "Know all men by these presents that I, John L. Pennington, for value received do hereby assign and turn over to E. W. Pennington the debt due me from N. L. Johnson arising out of a lumber and log transaction between himself and said Johnson, and about which there is now a suit pending in the Circuit Court for Lee County. This November 7th., 1895. "J. L. Pennington"; that not long after this assignment, I believe on Nov., 15th. or 16th., 1895, I informed A. Johnson, the husband, and the alleged agent and business manager of said N. L. Johnson that I had said assignment to me from said Pennington; that some short time after said assignment was made to me, I agreed with said Pennington to take only \$400.00 of this debt on my own debts, which I had against him; that the residue outside the costs and said \$400.00 should or might be collected and paid to A. J. Bumgardner, on a debt which I understood that said Pennington owed to him; that at the time of said Pennington made to me said assignment, he owed me individually for money loaned, for a pair of mules, and attorney's fees in round numbers ^{about} \$370.00, and to me as commissioner, about \$250.00; that since said assignment, said Pennington has paid me on the day of January, 1896, \$48.14; this sum I have applied to his indebtedness to me as commissioner. So help me God. This the 7th day of April, 1896.

E. W. Pennington

Virginia, Lee County, to-wit:

I, A. G. Hyatt, a notary public in and for the County and State aforesaid, do hereby certify that E. W. Pennington personally appeared before me in my county aforesaid and made oath to the foregoing affidavit.

Given under my hand this the 7th day of April, 1896.

A. G. Hyatt N.P.

Virginia, Lee County, to-wit:-

I, Joseph Lawson, do hereby solemnly swear that some time in the Fall of 1895, that I ^{for E. M. Spears} bought from John L. Pennington about 30,000 feet of poplar lumber which was stacked on the side tracts of the L. & N. R. R. in the town of Pennington Gap, Va.; that I advanced him on this lumber about \$30.00; that soon after I bought said lumber, I was informed by A. Johnson that this lumber was lumber that he had bought and had advanced money on, and that he had a written contract recorded giving him a lien on the same for his advancements; that this lumber stood for some time at Pennington Gap, when finally one day said Johnson, said Pennington and myself agreed with each other that I take, measure and inspect the same, and out of the price of the same pay said Johnson \$100.00, to go on the advancements made by him on said lumber and the residue to said Pennington; that I did thereafter so take, measure and inspect said lumber, which at the prices agreed upon amounted to the sum of \$ _____, and ~~at that~~ that on Janury, _____, 1896, I paid said Johnson \$100.00 and J. L. Pennington the residue. So help me God. This the 8 day of April, 1896.

Joseph Lawson

Virginia, Lee County, to-wit:-

I, A. G. Hyatt, a notary public in and for the county and State aforesaid, do hereby certify that Jos. Lawson whose name is signed to the affidavit above personally appeared before me in my county aforesaid and made oath to the truthfulness of the same. Given under my hand this the 8 day of April, 1896.

A. G. Hyatt N. P.

140
85.25
\$ 54.75

J. L. Pennington
adv. & Affidavits.

N. L. Johnson

Filed April the 11th 1896
A. B. Munsey Clerk

Exhibit "A"

Virginia

At a circuit court continued and held for Lee County at the Court-house thereof on Monday March the 9th 1896.

J L Pennington

Plffs on a motion for a writ of Habeas Corpus

vs

N L Johnson, A Johnson, J A Lubbs Defts

On the 4th day of this term of the Court came the plaintiff by his attorney, and it then appearing that the defendants had each had legal notice of this motion.

Plffs costs
C 2.88
S 1.50
attly 2.50
Co C 2.50
\$7.13

On motion of the plaintiff this motion was docketed, thereupon the defendant N. L. Johnson appeared by Counsel and offered to file her plea of offsets to the filing of which the plaintiff objected which objection the Court sustained. Upon the motion of said defendant this motion was passed till this day and the defendants failing to offer any further defence; It is considered by the Court that the plaintiff recover against the defendants the sum of \$1597.14 the penalty of said bond, but which is to be discharged by the payment of \$798.57, Seven hundred and ninety eight dollars & fifty seven cents, and legal interest thereon from the 18th day of January 1896, till paid and

J. L. Pennington

or } Copy of Judgment

N. L. Johnson et al

March Term 1896

To
25

The Court.
A Copy Made
At B. Munnery Clerk

Exhibit "B"

Virginia:

At a Circuit Court, continued and held for Lee County, at the Court-house thereof, *on Saturday June the 15th 1895.*

~~Present the same Judge as on yesterday.~~

J.L. Pennington, Pltff.

vs.

In Assumpsit:

N.L. Johnson Deft.

This day came again the parties by their attorneys, and the said defendant say ^{tho} she did not assume in ~~the~~ manner and form as in the plaintiffs declaration contained, and she also tendered special plea in writing, and the plaintiff demurred to said plea in writing, in which demurrer the defendant joined and said demurrer is overruled, and thereupon said plaintiff replied generally to said plea. And it being admitted that the matters in dispute involve the settlement of long and complicated accounts and hard for a jury in the course of a trial to determine, and by consent of parties the whole matter in dispute according to the pleadings in said case made up, is submitted to A.M. Goins, who is hereby appointed a commissioner for the purpose, whose duty it is made on lawful evidence to state an account and fully settle all matters involved in this action and between said parties and report the same to this court, and the evidence on which he bases his account, and report, and such evidence shall be subject to the lawful exceptions of either party as the same would be in the trial of this cause before a jury. And in all other respects such report made as aforesaid shall be taken as the finding of a commissioner in a chancery cause. And it is further agreed that the said Goins shall be allowed a compensation for his services as a commissioner in chancery to be taxed as costs. And this cause is continued.

A- Copy Teste:-

A.B. Munsey Clerk

J. L. Pennington
vs. Copy of Order
N. L. Johnson

June Term 1895-

6

J. S. Pennington

1893

1893

Per

Dec			Dec		
13	Soda ¹⁰ , salt ¹⁰ John ¹⁰ , lumber ¹⁰⁰	1 30	13	By Balance Retained	41 87
14	Order Martin ^{8.60} York ^{5.00}	13 60	21	By 45137 ft ^{1st} 6. " 26456 " 2 nd * } Hines creek	4 29 73
	Cash oil ^{1.25} 45. Salt ^{1.00} Order J. M. Wade ^{3.00}	5 20			
15	Atlanta Mds. - Order Martin ^{2.15}	5 30	21	" 8169 1 st " 12451 2 nd * 2 } Hines Creek	123 72
	Jas. Carter ^{1.00} 25. Army ^{2.50} Shad ^{7.50}	4 50		Carried over	595 32
	Shad ^{5.75} ; Nails ^{1.50} Salt ^{2.00} 25	2 97			
	Order Surgen ^{20.74} , Cash ^{5.00} 6 Sticks Sheet ^{9.00}	34 74			
	John ^{2.00} Order Walker ^{2.04}	2 34			
16	Shackelford ^{2.00} , E. J. Shes ^{2.35} Newman ^{4.00}	4 70			
	Mds. per order Jas. Carter ^{28.29} ; H. H. Wax ^{4.50}	32 79			
	Bledsoe ^{2.00} Hyman ^{2.50} - 3.50	8 00			
	Order ^{2.25} - 5.00	2 75			
17	Neuman ^{10.00} 18. Wynn ^{1.35}	11 35			
18	Fairman ^{6.00} ; Jas. Neuman ^{29.50}	35 50			
	Jas. Neuman ^{15.00} ; Surgen ^{5.00} ; E. L. Wax ^{3.05}	18 95			
	J. Self ^{9.00} 19. order to H. Jones ^{3.00}	3 90			
19	order Hyman ^{2.00} , 1.25 - Shad ^{4.75}	8 00			
	Starnes ^{3.00} Flour ^{1.30} , order to Army ^{2.00}	6 30			
	order to Army ^{1.00} Same ^{4.00}	5 00			
		207 22			
19	To mds. by Pds order ^{6.74} Cash ^{5.00}	9 24			
20	order Jones ^{8.00} ; Thomas ^{4.00}	13 75			
20	" Thomas ^{5.00} Mds per Wife ^{4.90} 21. Order Reynolds ^{7.30}	17 20			
21	" Johnson ^{4.85} ; Parsons ^{1.50} Mds ^{10.00} Chs. Tule ^{2.50} 150	20 35			
	" Tule ^{1.25} ; order Self ^{5.00} ; Horton ^{8.90} ; Parsons ^{8.58}	23 73			
	order to Will ^{7.00} ; 22 To Jones ^{4.90} Wynn ^{2.50}	14 40			
22	" White ^{2.00} ; Stapleton ^{1.75} ; Shackelford ^{5.00}	4 25			
22	Mds by Cecil ^{3.45} ; Hoover ^{1.00} ; Johnson ^{3.00}	7 45			
	order Hoover ^{2.00} ; Stapleton ^{3.50} ; Evans ^{5.00} ; Carr ^{1.50}	7 50			
	" Johnson ^{5.00} 23. Hyman ^{2.50} - 4.00	11 50			
	Carried over	335 59			

are

36 59

595 52

No.	Particulars	Amount	Total
23	order M. Head; Helden 6.40; Blodier 1.50	7 90	
"	E. F. Carter 3.00; Graham 8.70; Jas. York 15.00	26 70	
	J. J. Stapleton 6.40; Jas. Carter 7.55; York mds 8.61	22 16	
	J. P. Nix 2.55; M. C. Parsons 25.20; R. L. Bowman 12.83	40 40	
	Turner 2.45; Stapleton 5.00; A. Trust 60	8 05	
	Bickert; Rents 1.50; Sobarkh 11.00; Nails 10.50; Tol 50	5 53	
23	Shackelford 2.50; Arney 7.50; Newman 3.00	12 50	
	Tritt 1.50-5.65; Denmark 2.80; Owens 5.40	14 65	
	Martin 2.00; Dors 50	2 50	
		4 80	28
23	order Klusman 4.50; order 2.50	7 00	
"	Hart 2.00; H. and J. 3.90; T. Woodward 2.45	8 35	
26	" Helzer 6.00; J. J. Stapleton 3.40; Ben. Martin 2.00	11 00	
	Stapleton 3.10; Parsons 2.00; Cash 5.00	10 10	
27	Culico 38; Thrud 15; ord to Woodward 1.12 1/2; oil 20	2 36	
28	G. H. Johnson 2.50-25; Starnes 3.75	6 50	
	oil machine 2 pr. Frame chains 1.70	2 35	
	files 40; ord. to R. Pruitt 4.25	4 65	
	Tob 2.00; 29. order to Arney 1.00-1.00	5 31	49
		4 00	
30	J. F. Witt 5.00; Arney 6.00; Stacy Carter 4.00	20 85	
	Piper 80; Shackelford 2.00; Blodier 1.00; Klusman 3.10; Sugar 50	7 80	
1894 Jan 1	order Sprinkle 3.00; Belf 1.00	4 06	
"	Thomas 3.00; Flour 1.30; Arney 3.00	7 30	
2	" Klusman 8.00; Tritt 1.85; Pruitt 2.75; Stapleton 2.75	15 32	
3	" Hyman 3.75; Dwyer 63; Butler 24; Martin 80	5 38	
	" mds Barton 7.23; M. K. 2.00; Sprinkle 1.56	12 79	
	" Stapleton 2.45; Shackelford 60; Arney 2.00; Cuddy 5	5 60	
	Belf 7.40; Brewer 2.25; Barber 6.00	15 65	
4	Ben Martin 6.00; Hyman 4.95; Hyman 6.00	15 95	
4	Tritt 6.00; Klusman 18.00; Head 5.75	29 75	
5	cash Stapleton 10.00; ord Turner 1.75	67 8	71
		11 75	
	Amk. Carried forward	690 66	

595	32
-----	----

1894

Jan.	Amt. brot over	690 66
6	Amey; Newman Thomas 2.00 .95 5.00	7 95
	Shackelford; Stapleton Smith 2.50 10.00 5.00	17 50
8	Delph; Taber Smith 5.00 3.50 1.50	5 50
	Flour; Delph; Jones; Martin 1.50 5.00 6.00 10.10	11 57
9	Smith; Amey 75 3.00 2.00 2.50 1.10	9 35
	oil; Jones; Barber; Martin 40 8.00 6.50 1.00	15 90
10	Delph; Skuseman; Farmer 5.00 5.00 4.25	14 25
11	Burton; York; Watkins 8.00 3.00 6.00	13 60
12	Bladen; Hensley; Myers 3.00 2.95 2.50	8 45
13	ord. Amey; 13. Shackelford 1.50 2.50	4 00
	Stapleton; Menon; Wite 2.00 4.50 2.50	7 00
	J. Leaster; Kelly; Stambler 11.65 2.25 8.00	21 90
	Edison; Wedder; Leaster; Martin 1.00 4.90 1.50 10.00	17 40
15	Newman; Hughes; Skuseman 1.00 1.50 5.00	7 50
	order; 5.00 1.00 2.00 8.90	9 30
17	Stapleton; Stapleton 22.00 5.00	27 00
18	Amey; Han; Hax 3.35 5.00	8 35
	James; Hax; Hax; Hax 1.75 1.50 32.50	35 90
19	Delph; Burton; ord 5.00 2.00 1.00	18 00
20	85000 ft. W.R. Johnson st This was credited on page 450 Oct. 24, settlement made Jan 20 page 495 Gr. on note Gins creek etc order J. P. Parsons Balance	792 00 199 41 688 00 85 24

2717 72

1894

Jan 20	Delph; 175; Taber 3.50 5.00	5 75
	order; Jones; Leaster; Thomas 2.35 1.25 7.00	8 60
	H. Hax; Johnson; J. Wite 2.50 1.80 13.50	5 10
	Martin; Bladen; Brown; White 2.50 5.00 6.00	21 60
	Long; Hax; Newman; Delph 7.00 8.00 8.00 13.00	36 60
	Woodward; Hax; J. Wite 2.00 10.00 6.00	8 70
	Carried over	86 25

1894

Jan	Amt brot. over	595 32
20	By 4709 ft 1 st 9494 2 nd 2251 1 st Gins creek 2276 2 nd 2 nd 2	85 21 26 56
	By sawin 199414 Gins creek etc	598 24
	36 441 ft logs W.R. Johnson etc Settlement	437 32
	29728 ft lumber	352 39
	Hauling Gins creek etc 7	262 68
	Gr. on 6000 ft. Cullen etc	
	Gins creek etc 1 & 2	360 00
		2717 72
20	By Bal. settlement	85 24

85 24

8024

86 25-Meh

3 75-21

114092

14 25

34 27

16 43

400

12 33

14 25

121080

40	120
----	-----

43	05
21	00

11 25

1040

718

58 11

6 80

०३३

831

2831

685

783

2 15

16 25

653 84

5070

6015

27 . 5

64 7

270

51 7

3, 2

57

19.

77

54

14	2
----	---

170078

1894

June	Quits brot over	1700 28
8	Milk ^{2.00-1.25-1.00} flour ^{1.10 + 1.10}	6 20
	order ^{1.67} ; J. Squire Johnson ^{5.50}	5 17
11	" G. Peters; cash; Gilly ^{1.10 2.00 6.72}	3 78
12	order sheet; Mrs Hayston ^{22.50 72.49}	94 59
13	costs dgs; 15 order Shawkins ^{1.60 2.00}	3 60
15	order Litten, Milk; ^{1.20 1.15}	2 35
18	error page 481 order not credited	3 00
18	Advance on 60000 ft. page 481	360 00
18	Note Winter Johnson ^{21 79 27}	54 34
	Note + interest ^{1283.00} Note ^{30.71}	313 71
	Note Hela & Wood; Note J.R. Clegg ^{135.07 6.57}	141 58
19	Note H.T. Gilly; order to Franklin ^{10.92 2.00}	12 92
20	order Beaver; 2 loads by Bob Bunk ^{2.00 349 (4.4)}	5 49
25	order for Corn.	12 50
26	Bal due on 7234.76	234 76
30	Ch. 49.50, order Kelly ^{17.12}	68 62
30	Simber hauls by M.G. Pano	47 53
	J.T. Smith over bill	10 92
July 3	order to Hlusman ^{4.00}	4 00
7	Cash to A.J. Baumgardner ^{16.00}	115 00
8	Chick, order Carter; Lariden ^{1.50 5.00}	22 50
12	Film; coffee ^{4.00 2.00 10} Tob-	6 10
	oranges; Film ^{2.50 10.00}	10 25
	Stair; cash ^{7.50 3.77} Tans	4 52
14	Madre Holcomb order	9 44
	" Graham; flour rlf ^{5.00 4.00}	9 00
	Melan ^{20 + 40} Meat & flour ^{35.10}	35 70
	Flour, shoes, sugar ^{1.00 2.50 2.00}	5 50
15	June order, coffee, flour ^{12.50 1.50 6}	14 60
	Madre salt ^{6.40 1.00}	7 40
26	Cash to A.J. Baumgardner	200 00
		3525 70

1894

June	Quits brot over	1210 80
7	My cash	80
11	By 4665 ft 4/4 cull 6	27 99
	" 5335 " 4/4 Corn 12	64 02
	" 128 " 4/4 1 + 2 2	2 56
	60 " 3/4 15	90
June	10188	1307 47
13	" 782 ft 1 + 2 20	15 64
15	" 10537 "	126 44
	" 120 3/4 15	1 87
	1006 3/4 9	9 05
	1818 3/4 5	9 05
	Recd apr 25	
15	691 ft 1 + 2	13 82
	1860 " Corn	22 32
	4357 " Cull	26 10
	303 " 3/4 Corn	2 72
	166 " 3/4 Cull	83
	My Ribber time error	6 17
	" 17458 Cull	104 74
18	" Page 489	83 24
	" Standing yards 677	
	326, 183 @ 3.00	978 54
		2709 60
		2709 60

		1894	
July	Am't. brot over	3525 75	
27		2 08	July 27
	Standing lumber; ^{1.50} Order ^{46.00} Hitt	47 50	
30	Hauling A. J. Russell	18 71	
	" 20. J. Gilly ^{6.50}	14 51	
	order Chuck, ^{11.03} Maden self	17 53	
31	order Carter, M. C. ^{23.59} Parsons ^{5.00} cash	28 59	
Aug 4	ord. Giltner ^{7.50} Trill ^{3.75}	11 25	
6	Bills by self ^{15.70} sent in lumber ^{2.44}	16 14	
	standing lumber, ¹² cash to Parsons ^{28.36}	29 36	
10	order Werley	4 00	
	Cash to Baumgardner ^{5.00}	100 00	
11	order Kling ^{1.34} Trill	6 34	
	order by Peters by order ⁵⁰	6 35	
	Coffee, ²⁵ punch, ⁰⁸ candy	86	
13	ord. Rob Middleton; Tom Middleton ^{5.00}	9 16	
18	Shoes, ^{1.75} cash to be paid Hitt ^{44.89}	46 64	
23	Cash to A. J. Baumgardner	260 00	
	" " " "	35 00	
	Spelling book, ^{6.00} Flour ^{1.00}	1 60	
	Flour ^{3.00} with ^{4.50}	7 50	
Nov. 14	Coffee; ⁵⁰ or 6, ⁵⁰ s. of figs; ⁵⁰ coffee	1 50	
		4180 05	

Am't. brot over	2709 60
Aug 21 183 ft. 18 2- 20	83 66
17 15 " Corn 12	20 50
46 50 " 20	93 00
24 40 Corn 12	29 28
	2936 84

Filed Oct 29 1895
with the Deposition of H. Johnson

Copy of
Acch.

Filed before me as
evidence on Oct. 29, 1895,
with the Deposition of
H. Johnson—

A. M. Gouin

Special Comm.

Exhibit "D"

J. L. O'Keefe

1894	Nov 3	Sw	canal with W. L. Johnston.		
				360 76.30	8 67
				3310.86 1293	17 18
				7.5-2 500	14 77
					300
					300
					6 57
				50 11.5	7 95-
				2.00 300	7 70
				2.40 1.10-85-	7 91
				58 1.00	2 23
				225-	5 20
				20 250	6 22
				500 300	10 75-
				300-240 50	10 93
				2.00-2.00 17.83	22 58
				7.00	7 55-
				4.00 2.50-6.00 3.85	16 38
				4.00 300 23-60	5 03
				2.00 2.50 1.50 1.20	7 50
				3.65 4.30- 2.50-	10 73
				1.20-	7 15-
				1.50 50 1.00 1.20 30	4 50
				1.50 1.50- 3.00 2.00	8 05-
					15 00
				5.00 2.00	7 10
				2.00 2.00 2.00 2.00 1.25	3 85-
				18.37 27.50	45 87
				4.00 5.00 7.70	9 70
				1.25	3 65-
				2.20 2.40 3.00-2.00 1.00 1.00	15 00
					8 12

1895-

Mar	30	To Mar 7 th (Apr 4) Corcha, Apple 10 th 11 th flour 100	5 69
Apr	22	" Extra Lohr rolling 600	2 20
May	7	" Sawing 72 453 ft of Poplar @ 300	21 736
"	10	" order Mar. (Aug 1) Mds 5 th (2 or 3) Mds 600-100	5 178
Aug	13	" " to Carter (14) Sprinkle (19) Russell for fine	10 36
"	19	" " " Mow (20) order Carter, 12 11 flour	18 02
"	24	" Mds Self (Sept 28) Mds 3000 - Ham 800 N. J. f. Lohr	54 10
Sept	30	" ch. to M. Alder to pay, claim on 15000 ft. Lohr	29 00
Oct	14	" 10 th Pop. 30 (Nov. 22) order of Evans 11.13	11 53
Dec	18	" Order of Mds 176 10	176 10
		" Due bill to J. P. Ely, even	3 00
			883 46

Credits By Punnett's.

Mar	21	By 6101 ft. oak	61 07
"	"	" Johnson fence	22 59
Apr	4	" Carpet chin	1 25
"	"	" Moving mill	10 00
June	24	" E. M. Spurs note	130 71
Aug	0	" Lumber	5 18
"	"	" order N. R. Johnson	4 50
"	"	" Balance from J. D. Punnett's of -	3 32
Aug	19	" 61 ft. #2	1 15
"	"	" 730 ft. com	8 03
"	"	" 117" Cull	1 06
"	24	" Amt from J. D. Punnett's of -	3 74
Sept	17	" 305 ft. Lumber of 300	40
Oct	8	" 13407. m. cur 300	47 92
"	30	" 500. 142, 1925	9 47
"	"	" 2867. com 11 20	27 80
"	"	" 3696 ft. cur 600	22 18
"	"	" 2928 m " 300	10 24
"	"	" 128 ft. #2 - 19 25	2 52
"	"	" 513" com. 11 20	6 52
"	"	" 1574 cur 600	9 48
"	"	" 2250 m cur 700	7 87

883.46
396.69
486.77
179.10
307.67

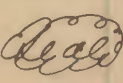
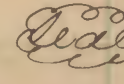
396.69

"L" "E"

Agreement made and entered this day
by and between J. L. Pennington ^{first part} party of 1st
and A. Johnson party of the second part
all of Lee County Virginia, Witnesseth, that
the first party sells to the second party
about 200,000 feet of poplar lumber to be
manufactured from timber on the lands
of E. S. War Carter Eldridge William
Eldridge the Jesse Heirs and Elijah
Pruett and Bartleys tract in the Pockett
Country about 7 miles North from Pennington
Gap Va the log yards to be on the lands
of Wm Eldridge and the Jesse heirs
there being or is to be two yards of same,
said lumber to be sawed & stuck by the
second party at \$3.00 per m ft log measure
logs to measure at the small end the
narrow way Doyle rule the price for
said lumber to be \$6.00 for shipping culls
\$11.75 for common 18.95 for one & two de-
livered at Pennington Gap Va in ~~an~~
convenient piles for locality on car said
saw bill and any other advance on said
lumber to be and operate as a lien on
the same, an advance of \$5.00 per m ft
to be made when each yard is on stick,
to be determined by the log scale on the
same & two logs the balance to be due
when the lumber is delivered and inspect-
ed at Pennington Gap Va and to be de-
livered within 90 days on stick or sooner
if required by the second party and

Should said first party fail to deliver
the lumber as above the second party
to have the right enter and said
lands and haul the same at the
expense of the first party not to exceed
\$3,00 per M ft. said ^{first} party agrees to
superintend the manufacture of said
lumber, and has the privilege to sell
that is it properly season and and
the second party is not to be responsible
for bad sawing but agrees to keep the
mill in proper condition to do good
work as ordinary Mills the logs to be
on the log yard by April 1895.
The log yards and lumber yards and
roads to same to be furnished free of
charge by the first party so that the second
party will be out no expense for mak-
ing roads or yards.

Witness following signatures & seals
Jan'y 25-1895

J. Pennington 
A. Johnson 

Virginia Lee Co. Forit:

I A. L. Hyatt a Notary Public for
the County of Lee in the State of aforesaid
Do certify that J. Pennington & A. Johnson
whose names are signed to the foregoing
writing bearing date Jan'y 25, 1895 have
acknowledged the same before me in my
County aforesaid

Gives under my hand this Jan 25 1895
A. L. Hyatt N.P.

Virginia Lee County Court;

In the Office of the Clerk of said
County the 5th Day of January 1875 this
contract was presented and together with
the Certificate thereto annexed admitted
to record.

Teste S. V. F. Richmond Clerk
"Copy Teste" S. V. F. Richmond Clerk

A. Johnson
with J. Contract-
J. L. Pennington.

C 73 1/2

John L. Pennington in acct with
O. L. Johnson.

Nov 3	To Bal	1.80	185-110	360	30	8.65
" 17	" Order A.R. Carter (23) Mdse (28) sawing 4310 ft 3 st	235	190	1293		17.18
" 30	" Alameda Hauling 2930 ft. (Dec 20) order Harbor	25	2430	9.52	5.00	14.77
Dec 20	" Order A.V. Pennington	300				3.00
Jan 7	" Shoes nails Rope Cash Sch	275	40	32	3.00	6.57
" 12	" Coffee Flour (1) Saw & C. ax & bundles Coff bolts	60	1.00	4.70	50	7.45
" 25	" Shoes dye appls Coff (26) order M.H. Shackelford	150	10	100	200	7.70
" 26	" Order M.H. Cash dye order Litt. Furniture	231	1.00	25	2.40	7.71
" 29	" Lot Brown Leather Pegs appls order Shackelford	20	30	58	05	2.23
Feb 20	" flour malinge of appls 2 up (23) order M.H.	1.00	1.30	05	10	5.20
" 26	" Oranges Soda 271 Meat Coff o. " Ruth Evans	10	05	237	100	6.22
Mar 4	" Order Evans Eldridge (9) M.H. Johnson. Shoes	75	500	150	350	10.75
" 9	" " Eldridge Exnails Coff 60 at Jersey	300-240	50	60	50	10.93
" " "	" Woodard Mdse 2 Meyers Hauling order Soda order	200-200		17.83	50	22.58
13	" Strumps Lot (14) order M.H. (15) appls	25	20	7.00	10	7.55
						737.19

Date	Description	Amount	Balance
Nov. 16	to order Eldridge J. Newman Put Woodland	4.00	16.38
"	" " " " Sprinkle (18) Max Hunter Poles	2.50 - 6.00 3.88	5.03
"	" " " " Sprinkle (20) Tritt (21) Hughes Newman	2.00 2.50 1.50 1.50	7.50
"	21 " order V. Bot Carter Indre self (22) Andre. Poles child	3.63 1.35 2.75	10.73
"	22 " H Sprinkle (23) Eldridge (24) Carter	90 5.00 1.25	7.68
"	24 " order with Woodard Salt floor Edg-	1.50 30 1.00 1.20 30	4.50
"	" " " " Heavy Carter (23) Woodard	1.50 1.55 3.00 2.00	8.05
"	23 " Sawing 5000 ft yard 2		5.00
"	" " order Ed Evans (25) Apples order White	3.00 10 2.00	7.10
"	25 " " " Drilling Stays lot " Wood Smith	2.00 20 20 20 1.25	3.85
"	" " " Sawmill 6125 - 3, ch to Hunt 600 a	18.37 27.50	5.87
"	" " " order Newman, H Sprinkle 1 hand - 7 hrs	4.00 5.00 70	9.70
"	28 " " " Apples (27) order from claim order	20 10 1.50 50 1.25 10	1.65
"	30 " " " Shackelford - with Eldridge Tritt in expense	2.50 2.00 300 - 200 4.00 1.50	15.00
"	" " " " Woodard Sprinkle order from with apples	2.50 3.00 202 20 10	8.12
"	" " " Nails Hay (Apr 4) claim Apples (12) floor	50 1.53 2.50 10 1.00	5.69
Apr 22	" " Extra labor rolling logs	2.20	2.20
May 7	" " Sawing 72455 ft Poplar @ 3.00		217.36
" 10	" " " order Max (Aug 1) Indre (223) Indre	39.28 5.00 6.00 - 1.50	51.78
Aug 13	" " " " Carter (14) Sprinkle (19) Russell for timber	3.50 3.00 3.86	10.36
" 19	" " " " order to Man (20) order Carter (21) floor	10.00 4.42 1.10	15.52
" 24	" " " " Indre self (Sept 28) Mule hired as WRF Interest	14.00 - 3.00 35.00 2.10	54.10
Sept 30	" " " " ch for Mr Eldridge to pay claim on 15000 ft lumber		29.00
Oct 14	" " " " 10 Rope 30 (Nov 22) order from	11.13	11.53
Dec 18	" " " " order J. Watts	176.10	176.10
"	" " " " Bill J. Petyear	3.00	883.46

Credito

Date	Particulars	Debit	Credit	Balance
Mar 21	By 6101 ft ash			61.01
"	Johnson fence			22.59
Apr "	" Capital chain			25
"	" Moving Mill			1000
June 24	" E. H. Spears note			130.71
Aug 3	" Lumber			5.18
"	" order H. R. Johnson			50
"	" Bal from W. Pennington's acct			332
" 19	" 61 ft 142			115
"	" 730 " corn			803
"	" 174 " cull			106
" 24	" Bal from J. H. Pennington's acct			374
Sept 17	" 30.5 ft Lumber at 3 1/2			20
Oct 8	" 13407 " H. cull 3 1/2			47.92
" 30	" 500 " 142 75			9.47
"	" 2347 " corn 11.75			27.80
"	" 3696 " cull 6			22.17
"	" 2928 " H. " 3 1/2			10.24
"	" 128 " 142 19.75			25.2
"	" 5713 " Corn 11.75			6.02
"	" 1574 " culls 6			9.44
"	" 2250 " H. "			787
				\$396.69

D. L. Pennington

3 are with

N. L. Johnson

Total debits 883⁴⁶/₁₀₀

" Credits 396⁶⁹/₁₀₀

Balance \$486⁷⁷/₁₀₀

Virginia Lee County to wit
I A. G. Hyatt a notary
Public for the County of Lee in the
State of Virginia do hereby Certify
that N. L. Johnson this day personally
appeared before me and made
oath that the within account
against J. W. S. Pennington as itemized
and amounting to the sum total of
\$883⁴⁶/₁₀₀ subject to the credits likewise
itemized and amounting to \$396⁶⁹/₁₀₀ leaving
Balance due ~~some~~ on said
account the sum of \$486⁷⁷/₁₀₀ is just
Correct. and remains unpaid this
day together with with its interest—
Given under my hand Jan 13/96 A. G. Hyatt N.P.

To N.L. Johnson:-

You are hereby notified that on ^{Saturday} ~~Friday~~ April, 18th, 1896, in the town of Wise, Wise County, Virginia, and in the office of the Hon. W.T. Miller, and between the hours of 11 A.M. and 1 P.M. of that day, I the undersigned J.L. Pennington will move the Hon. Judge, W.T. Miller, judge of the Circuit Court for Lee County Virginia, to dissolve the injunction granted you on the 9th. day of March, 1896, in the chancery cause of yourself against me, for reasons apparent upon the face of your bill, to-wit:-

- (1). Because in your said bill there is no prayer for the injunction granted you, which is necessary;
- (2). Because the principal, if not the only ground alleged for your injunction was the alleged insolvency of myself, without furnishing any proof of that allegation;
- (3). Because you do not assert any precise or definite amount of your pretended claim against me, nor show that your pretended claim is an ascertained demand;
- (4). Because your pretended matters of set-off are not alleged or shown to have been of such a nature as could not have been proved at law in the suit originally between yourself and myself out of which the original judgement grew which you now have enjoined;
- (5). Because the matters and things stated in your said bill necessary for you to obtain such injunction are not true; and,
- (6). Because of various other reasons ^{be} to assigned at the time of making this motion, which will appear from an inspection of your bill and my answer filed thereto, together with its exhibits, and ^h which will also appear from an inspection of various affidavits filed therein.

This the 8th. day of April, 1896.

J. L. Pennington by
Pennington Bros. P.D.

Virginia, Lin County, to-wit:

I, D. W. Lane do hereby solemnly swear
that on the 8th day of April, 1896, I delivered
to N. C. Johnson a true copy of the within
notice. So help me God. This April, 8th, 1896.
D. W. Lane

Virginia, Lin County, to-wit:

I, A. G. Hyatt a notary public in and for
the said County & State, do hereby certify that
D. W. Lane whose name is signed to the foregoing
affidavit dated April, 8th 1896 personally
before me in my County aforesaid and made
oath in due form to said affidavit. This
Given under my hand this April 8th 1896.

A. G. Hyatt N. Public
" "

J. L. Pennington
only notice to
N. C. Johnson

N. C. Johnson

John L. Pennington } Motion to
 and } dissolve
 N. L. Johnston } Injunction

Reasons why this injunction
 should be dissolved:-

(1) No specific prayer for the
 granting of injunction, which is
 necessary. Bartons Chan. P. 268 &
 427; Daniels Chan. Prac. vol. 1 p 388.

XX

(2) As the principal ground
 for insolvency alleges insol-
 vency of Pennington; but of-
 fers no proof of that fact. Bart.
 Chan. P. 427; 1 High on injunction
 p 35-

XX

(3) The plaintiff does not set out

or assert any definite or precise amount of her set off; nor does she say whether the set off is an ascertainment of demand, which she should have done. High on Injunctions § 242

#

(4) Her matters of set off are not alleged or shown to have been of such a nature as could not have been proved at law. High Inj. § 243. See the order of submission, by it she could have done so

#

(5) If her matters of set off are the same offered to be set off against against the motion on Forth coming

band, all but \$179.10, could
have been proved as a defense
to the action at law. That
being the case, she is now
stopped to set them up. (83
Va. 1-876) In the action at
law in which this judge-
ment was obtained, the plain-
tiff therein filed an account
of set off, running down to
the closing of the account
before Amos. Goins. She will
not in law be permitted to
split up her demands.
H. Min. 787 (3rd Ed.)

J.L. Pennington

Deft.

ads.

Brief of deft on motion to dissolve Injunction.

N.L. Johnson.

(1). Because in your said bill, there is no prayer for the injunction granted you, which is necessary. On page 268 of Barton's Chancery practice we find it said: "A court will not grant an injunction unless especially prayed for". The plaintiff in her bill does not pray for an injunction, although, she cites therein, that is the object of her bill. And again on page 427 of Bar. Chan. Prac., we find this said: It is a rule also that an injunction will not be granted unless EXPRESSLY praed for in the bill".

#

(2). Because the principal, if not the only ground alleged for your injunction was the alleged insolvency of J.L. Pennington, without furnishing any proof of that allegation. On page 427 of Bart. Chan. Prac., #133, we find it said "the bill of injunction ++++++ shall be clear, precise, and positive; for the courts will not award restraining orders upon argumentative allegations, upon facts stated only from the information or belief, or upon stated from information and belief, or upon the mere apprehensions and fears of complainant, unsustained by facts establishing their probability".

#

(3). Because you do not assert any precise or definite amount of your pretended claim against said Pennington, or show that your pretended claim is an ascertained demand. In section 242 of High on Inj., we find, he says: "The mere existence of cross demands is not of itself sufficient to constitute and equitable set-off, or to warrant an injunction, and a court of equity will not on that ground of an open and unsettled account between the parties, restrain a judgement creditor from profiting by his judgement. And it is error to enjoin the enforcement of a judgement upon the ground of an set-off or counter claim when no precise or definite amount is shown to be due thereon."